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CRITICAL AREA PERMITTING REGULATIONS



SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, OFFICE OF OCEAN
AND COASTAL RESOURCE MANAGEMENT

RULES AND REGULATIONS FOR PERMITTING IN THE CRITICAL AREAS OF THE COASTAL ZONE

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CHAPTER 30.
DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL-- COASTAL
DIVISION

Statutory Authority: 1976 Code Sections 48-39-10 through 48-39-230

30-1. Statement of Policy.

A. South Carolina Coastal Zone Management Act.

(1) The South Carolina Coastal Zone Management Act was passed by the 1977 General Assembly of South Carolina to provide for the protection and enhancement of the State's coastal resources. This legislation creates the South Carolina Coastal Council which is given the task of promoting the economic and social welfare of the citizens of this State while protecting the sensitive and fragile areas in the coastal counties and promoting sound development of coastal resources. The South Carolina Coastal Zone Management Act was amended by Act 181 of 1993 which merged South Carolina Coastal Council with the South Carolina Department of Health and Environmental Control. South Carolina Coastal Council became the Office of Ocean and Coastal Resource Management (OCRM).

(2) Through the efforts of an overall coastal zone management program and permitting process, the Department seeks to guide the wise preservation and utilization of coastal resources. These rules and regulations are intended to:

(a) aid developers and others in taking advantage of state-of-the-art techniques in developing projects compatible with the natural environment;

(b) insure consistent permit evaluations by the Department; and

(c) serve as a stimulus for implementation of better and more consistent management efforts for the coastal zone.

(3) These regulations are the Department statements of general public applicability that implement and prescribe policy and practice requirements of the Department. They are to be read as part of, and to be construed with, the policies set forth in the South Carolina Coastal Management Program.

B. The Value of Tidelands and Coastal Waters.

(1) The tidelands and coastal waters of the South Carolina coast are a very dynamic ecosystem and a valuable natural resource for the people of the State. The tides regularly ebb and flood through the coastal inlets, bays and marshes which constitute a fragile area, vulnerable to the impacts of many human activities. Tidelands and coastal waters are identified as "critical areas" over which the Department has direct permitting authority.

(2) The saline marshes are highly productive components of the marine food web of coastal waters and estuaries. Decaying organic material, called detritus, serves as the basis of the food web and is the major biological contribution of the saline marshes. Many commercially and recreationally important fish and shellfish species depend on the marshlands and estuaries for all

or part of their life cycle. In addition, many birds and other forms of wildlife utilize wetlands as habitat as well as a source of food. Tidelands and coastal waters also have become increasingly important in recent years for the purposes of aquaculture.

(3) Among the important functions of the salt and brackish marshes is their role in protecting adjacent highlands from erosion and storm damage. Marsh vegetation absorbs and dissipates wave energy and establishes a root system which stabilizes the soils. Its effectiveness as a buffer depends on the surface area available which, combined with the composition of the underlying substrate, allows tidelands to act as "sponges," absorbing and releasing waters during storms or times of heavy riverine discharge.

(4) Marshes also perform a valuable waste treatment function since the dense vegetation acts as a filter, trapping sediments and pollutants which enter as run-off from the upland areas. The trapping of sediments helps maintain water clarity, a factor important to clam, oyster, and phytoplankton productivity. The marshes also assimilate pollutants and recycle nutrients through various biochemical processes.

(5) Coastal waters and the adjacent marshes are also significant as aesthetic, recreational and educational resources. Much of the expenditure for recreation and tourism in the South Carolina coastal zone is for purposes of enjoying outdoor activities and the aesthetic pleasures of undisturbed tideland areas. These natural areas lend themselves to meaningful and important academic pursuits such as bird-watching and wildlife population and nutrient recycling studies.

(6) These same unique natural resource areas face increasing land development pressure and negative impacts from human activities in and around them. The marshes constitute a fragile ecosystem; consequently, indiscriminate dredging and filling, degradation of water quality or unsound building and development practices can have long-term detrimental effects. All development need not be prohibited; rather, the range of favorable and unfavorable results needs to be realized, and analysis made to determine priorities, evaluate alternatives, anticipate impacts, and suggest the best methods and designs to carry out wise development of these resources.

C. The Value of Beaches and Dunes.

(1) In 1977, the South Carolina General Assembly enacted the Coastal Tidelands and Wetlands Act (Coastal Zone Management Act) to protect, preserve, restore and enhance the coastal resources of South Carolina. The Act created a new state agency, the South Carolina Coastal Council, and charged it with the responsibility of administering and enforcing the statute. This legislation, however, proved ineffective for managing the beach/dune system because regulatory authority over these areas given to the Coastal Council was not sufficient. From the State's beaches, the Coastal Council could regulate landward only to the primary oceanfront sand dune or to the highest uprush of the waves where no such dune existed.

(2) Lacking adequate authority, the Coastal Council was unable to prevent structures from being sited unwisely close to the eroding shore, thus making them extremely vulnerable to the effects of storms and high tides. The owners of the structures, in most instances, quickly sought permits from the Coastal Council (herein referred to as the Department) to construct hard erosion control devices in order to protect their erosion threatened structures. Unfortunately, hard erosion control

devices can result in increased erosion, a lowering of the beach profile (thereby reducing the beach/dune system's tourist and recreational value), and a decrease in the ability of the beach/dune system to protect upland property from storms and high tides. Often the result of attempting to protect upland property with hard erosion control structures is that dry sand beaches disappear, thereby placing many millions of tourist dollars in jeopardy and destroying this natural legacy for future generations.

(3) In 1986, the Blue Ribbon Committee on Beachfront Management was formed in response to the growing recognition that existing law was inadequate to protect the fragile beach/dune resource. The Committee determined that the beach/dune system of the State was in a state of crisis. The report concluded that "over fifty-seven miles of our beaches are critically eroding. This erosion is threatening the continued existence of our beach/dune system and thereby threatening life, property, the tourist industry, vital State and local revenue, marine habitat, and a national treasure". The 1988 Beachfront Management Act was enacted by the South Carolina General Assembly in response to the concerns presented in this report.

(4) It has been clearly demonstrated that the erosion problems of this State are caused by a persistent rise in sea level, a lack of comprehensive beach management planning, and poorly planned oceanfront development, including construction of hard erosion control structures, which encroach upon the beach/dune system. Sea level rise in this century is a scientifically documented fact. Our shoreline is suffering from its effects today. It must be accepted that regardless of attempts to forestall the process, the Atlantic Ocean, as a result of sea level rise and periodic storms, is ultimately going to force those who have built too near the beachfront to retreat.

(5) There are three basic approaches to beachfront management:

(a) armor the beach with hard erosion control devices;

(b) renourish the beach with sand;

(c) retreat from the beach.

(6) The 1977 Coastal Zone Management Act, as amended, rejects construction of new erosion control devices and adopts retreat and renourishment as the basic state policy towards preserving and restoring the beaches of our state. The Department, as steward of the State's coastal resources, has the responsibility under the new statute to implement the forty-year retreat policy by designating a baseline and setback line on all oceanfront properties of the State, developing a long-range comprehensive State plan for management of the beach/dune resource, and supporting the efforts of local governments in developing local long-range beach management plans. In addition, the Department shall require property owners to move new construction and reconstruction as far landward as possible, to limit the size of structures within the constraints of the Act, and to seek innovative ways to ameliorate the effects of beach erosion.

(7) In the final analysis, the long-range public good is the same as the long-range private good. If the dry sand beaches of this State disappear because of the failure of its people and governmental natural resource managers to protect the beach/dune system, future generations will never have the opportunity to use and enjoy this valuable resource.

D. Definitions:

(1) Abandoned Vessels/Structures - Any boat, barge, dock, pier or other structure/vessel in the critical areas that is no longer functional for its primary, intended purpose and for which repair or salvage activity is not actively being pursued.

(2) Active Beach - the area seaward of the escarpment or the first line of stable natural vegetation, whichever first occurs, measured from the ocean landward.

(3) Administrative Law Judge - a judge appointed pursuant to SC Code Ann. Section 1-23-510 (1976) (as amended) who is assigned a particular matter by the Chief Administrative Law Judge, or if no administrative law judge has been assigned for a particular matter, the Chief Administrative Law Judge.

(4) Baselines:

(a) Within a standard erosion zone the baseline is established at the location of the crest of the primary oceanfront sand dune in that zone. In a standard erosion zone in which the shoreline has been altered naturally or artificially by the construction of erosion control devices, groins, or other man-made alterations, the baselines must be established by the Department using the best scientific and historical data, as where the crest of the primary ocean front sand dune for that zone would be located if the shoreline had not been altered.

(b) Within an unstabilized inlet zone the baseline must be determined by the Department as the most landward point of erosion at anytime during the past forty years, unless the best available scientific and historical data of the inlet and adjacent beaches indicate that the shoreline is unlikely to return to its former position. In collecting and utilizing the best scientific and historical data available for the implementation of the retreat policy, the Department as part of the State Comprehensive Beach Management Plan provided for in this chapter, among other factors, must consider: historical inlet migration, inlet stability, channel and ebb tidal delta changes, the effects of sediment bypassing on shorelines adjacent to the inlets, and the effects of nearby beach restoration project on inlet sediment budgets.

(c) Within a stabilized inlet zone the baseline location must be determined in the same manner as provided for in a standard erosion zone. However the actual location of the crest of the primary oceanfront sand dune of that erosion zone is the baseline of that zone, not the location if the inlet had remained unstabilized.

(5) Beach/Dune System - all land from the mean high-water mark of the Atlantic Ocean landward to the 40 year setback line described in Section 48-39-280.

(6) Best Management Practices - measures to reduce adverse environmental impacts.

(7) Boat – a vessel or watercraft of any type or size specifically designed to be self propelled, whether by engine, sail, paddle, or other means, which is used to travel from place to place by water.

(8) Boat Yard - a facility where boats are repaired.

(9) Coastal Waters - the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark.

(10) Coastal Zone - all coastal waters and submerged lands seaward to the State's jurisdictional limits and all lands and waters in the counties of the State which contain any one or more of the critical areas. These counties are Beaufort, Berkeley, Charleston, Colleton, Dorchester, Horry, Jasper, and Georgetown.

(11) Coastal Zone Management Appellate Panel - the appellate body which conducts a quasi-judicial review of decisions from the Division pursuant to SC Code of Laws, Section 1-23-610 (1993 amend.) and 48-39-150(D) (1993 amend.).

(12) Critical Areas - any of the following: (1) coastal waters, (2) tidelands, (3) beach/dune systems and (4) beaches.

(13) Department - the South Carolina Department of Health and Environmental Control (also referred to as SCDHEC).

(14) Destroyed Beyond Repair:

(a) Habitable Structures - destroyed beyond repair means more than sixty-six and two-thirds percent of the replacement value of the habitable structure has been destroyed. See R.30-14(D)(3)(a).

(b) Pools - destroyed beyond repair means more than sixty-six and two-thirds percent of the replacement value of the pool has been destroyed. See R.30-14(D)(3)(b).

(c) Seawalls and Bulkheads - damage to seawalls and bulkheads must be judged on the percentage of the structure remaining intact at the time of the damage assessment. Erosion control structures or devices must not be repaired or replaced if destroyed:

(i) more than eighty percent above grade through June 30, 1995;

(ii) more than sixty-six and two-thirds percent above grade from July 1, 1995, through June 30, 2005;

(iii) more than fifty percent above grade after June 30, 2005. See R.30-14(D)(3)(c).

(d) Revetments - must be judged on the extent of displacement of the stone, effort to return this stone to the pre-storm event configuration of the structure or device, and the ability of the revetment to retain backfill material at the time of the damage assessment. See R.30-14(D)(3)(d).

(15) Division - the Administrative Law Judge Division.

(16) Dock - All docks defined herein refer to structures that provide docking space for ten boats or less.

(a) Boat Storage Dock - a floating structure that a vessel is parked on for purposes of out-of-water storage.

(b) Commercial Dock – a docking facility used for commercial purposes. A commercial dock is not necessarily a marina, a boat yard, or a dry storage facility.

(c) Community Dock – any docking facility that provides access for more than four families, has effective docking space of no more than 250 linear feet and is not a marina. Effective docking space means adequate length and water depth to dock a 20-foot boat.

(d) Joint use dock – any private dock intended for the use of two to four families.

(e) Private Dock – any facility that provides access for one family, and is not a marina.

(17) Emergency Orders - orders issued by an appointed official of a county or municipality or of the state acting to protect the public health and safety, upon written notification to the Department. However, with regard to the beach/dune critical area, only the use of sand bags, sand scraping, or renourishment, or a combination of them, in accordance with 30-15(G), is allowed pursuant to emergency orders.

(18) Emergency Repairs - repairs due to emergencies as defined in Section 48-39-10(U) to an existing bank, dike, fishing pier, or structure other than ocean front erosion control structures or devices which have been erected in accordance with federal and state laws or provided for by general law or acts passed by the General Assembly, if notice is given in writing to the Department within 72 hours of the onset of the needed repair.

(19) Erosion Control Structures and Beach Renourishment:

(a) Seawall - a special type of retaining wall that is specifically designed to withstand wave forces.

(b) Bulkhead - a retaining wall designed to retain fill material, but not to withstand wave forces on an exposed shoreline.

(c) Revetment - a sloping structure built along an escarpment or in front of a bulkhead to protect the shoreline or bulkhead from erosion.

(d) Beach Renourishment - the artificial establishment and periodic renourishment of a beach with sand that is compatible with the beach in such a way as to create a dry sand beach at all stages of the tide and/or provide some level of storm protection.

(20) Feasible (feasibility) - As used within these rules and regulations (e.g., "unless no feasible alternative exists"), feasibility is determined by the Department with respect to individual project proposals. Feasibility in each case is based on the best available information, including, but not limited to, technical input from relevant agencies with expertise in the subject area, and consideration of factors of environmental, economic, social, legal and technological suitability of the proposed activity and its alternatives. Use of this word includes, but is not limited to, the concept of reasonableness and likelihood of success in achieving the project goal or purpose. "Feasible alternatives" applies both to locations or sites and to methods of design or construction, and includes a "no action" alternative.

(21) GAPC (Geographic Areas of Particular Concern) - areas within South Carolina's coastal zone which have been identified in the State's Coastal Management Program as being of such importance as to merit special consideration during the Department review of permit applications. GAPC's consist of: (1) areas of unique natural resource value; (2) areas where activities, development, or facilities depend on proximity to coastal waters, in terms of use or access; and (3) areas of special historical, archeological or cultural significance.

(22) Garage - a structure built and used for the purpose of parking and protecting vehicles. The structure may be open or enclosed. An open parking area under a habitable structure will not be counted when computing the square footage of a habitable structure.

(23) Groin - a structure designed to stabilize a beach by trapping littoral drift. Groins are usually perpendicular to the shore and extend from the shoreline into the water far enough to accomplish their purpose. Groins are narrow and vary in length from less than one hundred feet to several hundred feet. Groin fields are a series of two or more groins which, because of their proximity to each other, have overlapping areas of influence. Consequently, the entire groin field must be considered as one system in order to accurately analyze beach response. The following is a list of the existing groins and groin fields in South Carolina as of 1991.

LIST OF EXISTING GROINS AND GROIN FIELDS IN SOUTH CAROLINA AS OF 1991

Garden City:

1. Six (6) groins south of the intersection of Yucca Street and Waccamaw Drive.
2. Two (2) groins south of the intersection of Dolphin Street and Waccamaw Drive.

Pawleys Island:

3. Twenty-three (23) groins along an area south of the northern causeway.
4. One (1) groin at the north end of the Island.

Isle of Palms:

5. One (1) groin at the north end of the Island along Dewees Inlet.
6. Two (2) groins at 42nd and 44th Avenues.

Sullivans Island:

7. Six (6) groins adjacent to Breach Inlet.

Folly Beach:

8. Forty-seven (47) groins.

Edisto Island:

9. Thirty-two (32) groins from the State Park south to Mikell Street.
10. Two (2) groins at Louise and Bailey Streets, along the South Edisto River.

Hunting Island:

11. One (1) groin at the north end of the Island.

Fripp Island:

12. One (1) groin at the north end of the Island.

13. Five (5) groins along the southern end of the Island.

Hilton Head Island:

14. Seventeen (17) groins in an area adjacent to Port Royal Sound.

15. Two (2) groins at the north end of Forest Beach, north of Yucca Drive.

16. Three (3) groins at Braddock Point, northwest of Merganser Court.

17. One (1) groin at Land's End, adjacent to Braddock Cove.

(24) Habitable Structure - a structure suitable for human habitation including, but not limited to, single or multi-family residences, hotels, condominium buildings, and buildings for commercial purposes. Each building of a condominium regime is considered a separate habitable structure, but if a building is divided into apartments, then the entire building, not the individual apartment is considered a single habitable structure. Additionally, a habitable structure includes porches, gazebos, and other attached improvements.

(25) Inlet Erosion Zone - a segment of shoreline along or adjacent to tidal inlets which is directly influenced by the inlet and its associated shoals.

(a) Unstabilized Inlets - inlets that have not been stabilized by jetties, terminal groins, or other structures.

(b) Stabilized Inlets - inlets which are stabilized by jetties, terminal groins, or other structures.

(26) Jetty - a structure that extends into the water to direct and confine river or tidal flow into a channel and to prevent or reduce shoaling of the channel by littoral material. Jetties are constructed for the purpose of stabilizing navigation channels.

(27) Joint Public Notice - a permit application public notice issued jointly between the Department and the United States Army Corps of Engineers or other agency and processed independently by the Department.

(28) Major Development Activity - any construction activity that is not a Minor Development Activity.

(29) Marinas - a marina is any of the following:

(a) locked harbor facility;

(b) any facility which provides fueling, pump-out, maintenance or repair services (regardless of length); or

(c) any facility which has permanent docking space of 250 linear feet or greater.

(d) any water area with a structure which is used for docking or otherwise mooring vessels and constructed to provide temporary or permanent docking space for more than ten boats.

(e) a dry stack facility.

(30) Master Plan - a document or a map prepared by a developer or a city as a policy guide to decisions about the physical development of the project or community.

(31) Minor Development Activity - the construction, maintenance, repair or alteration of any private pier or erosion control structure, the construction of which does not involve dredging.

(32) Nonwater-dependent - a facility which cannot demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(33) Normal Maintenance and Repair - work performed on any structure within the critical area as part of a routine and ongoing program to maintain the integrity of the structure provided that the structure is still generally intact and functional in its present condition and the work only extends to the original dimensions of the structure. See R.30-5(D).

(34) OCRM - the South Carolina Department of Health and Environmental Control's Office of Ocean and Coastal Resource Management.

(35) Offshore Breakwater - a structure which is designed to protect an area from wave action, is generally built parallel to the shore, may or may not be submerged, and may be built singly or in series. Breakwaters may interfere with natural wave action and wave induced currents.

(36) Party - each person or agency named or admitted as a party or properly seeking and entitled to be admitted as a party, including a license or permit applicant.

(37) Planned Development - a development plan which has received local approval for a specified number of dwelling and other units. The siting and size of structures and amenities are specified or restricted within the approval. This term specifically references multi-family or commercial projects not otherwise referenced by the terms master plan or planned unit development.

(38) Planned Unit Development - a residential, commercial, or industrial development, or all three, designed as a unit and approved in writing by local government.

(39) Pool - a structure designed and used for swimming and wading.

(40) Primary Oceanfront Sand Dunes - those dunes which constitute the front row of dunes adjacent to the Atlantic Ocean, are partially or wholly seaward of the setback line, are not landward of an existing functional erosional control device, and have a minimum height of thirty-six (36) inches, as measured vertically from the crest to the toe of the dune. For purposes of establishing the baseline, this dune must also form a continuous line for 500 shore parallel feet.

(41) Public Interest - As used within these Rules and Regulations, public interest refers to the beneficial and adverse impacts and effects of a project upon members of the general public, especially residents of South Carolina who are not the owners and/or developers of the project. To the extent that, in the opinion of the Department, the value of such public benefits is greater than the public costs embodied in adverse environmental, economic and fiscal effects, a proposed project may be credited with net public benefits.

(42) Setback Area - the area located between the setback line and the baseline.

(43) Setback Line - the line landward of the baseline that is established at a distance which is forty times the average annual erosion rate as determined by historical and other scientific means and adopted by the Department in the State Comprehensive Beach Management Plan. However, all setback lines shall be established no less than twenty feet landward of the baseline, even in cases where the shoreline has been stable or has experienced net accretion over the past forty years.

(44) Significant Dune - A dune located completely seaward of the setback line, which because of its size and/or location is necessary to protect the beach/dune system of which it is a part.

(45) Special Geographic Circumstances - physical characteristics and land uses of surrounding uplands and waters which warrant additional consideration toward dock sizes. Special Geographic Circumstances identified by OCRM include: tidal ranges of greater than 6 feet; lots with greater than 500 feet of water frontage; and no potential access via dockage from the opposite side of the creek. At the discretion of Department staff, one or more of these circumstances may be applied to dock applications.

(46) Standard Erosion Zone - a segment of shoreline which is subject to essentially the same set of coastal processes, has a fairly constant range of profiles and sediment characteristics, and is not directly influenced by tidal inlets or associated inlet shoals.

(47) Tidelands - all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the Department shall have the authority to designate its approximate geographic extent.

(48) Transmittal Form - the official form prepared by the agency with subject matter jurisdiction that is filed with the division notifying it of a request by any person for a contested case hearing.

(49) Water-dependent - a facility which can demonstrate that dependence on, use of, or access to coastal waters is essential to the functioning of its primary activity.

(50) Waterfront property – For purposes of these regulations, waterfront property will generally be defined as upland sites where a straight-line extension of both, generally shore perpendicular, upland property lines reaches a navigable watercourse within 1000' of the marsh critical line. Waterfront property may also be identified via an approved dock master plan where designated corridors differing from upland property line extensions are delineated.

30-2. Applying for a Permit.

A.Preliminary Review: The Department encourages the submission of development plans for preliminary review. If a permit is necessary, the Department will make every effort to assist the applicant in expediting the administrative aspects of filing an application.

B.Permit Application: Except for those exemptions as specified in the 1977 Coastal Zone Management Act, as amended, any person wishing to alter a critical area must receive a permit from the Department. Section 48-39-140(B) directs that certain information be included in the permit application submitted to the Department. The following minimum information shall ordinarily be required before a permit application is considered complete:

(1) Name and address of the applicant;

(2) A plan or drawing showing the applicant's proposal and the manner or method by which the proposal shall be accomplished;

(3) A plat or a copy of a plat of the area in which the proposed work will take place;

(4) A certified copy of the deed, lease or other instrument under which the applicant claims title, possession or permission from the owner of the property to carry out the proposal;

(5) A list of all adjoining landowners and their addresses or a sworn affidavit that with due diligence such information is not ascertainable. When considered appropriate by the Department, additional information may be required concerning affected landowners;

(6) A brief description of the proposed alteration, its purpose and intended use, including a drawing of the type of structure, a description of the method of construction, and identification of materials and equipment to be used. In some instances, a registered survey may be required as part of the application package, particularly those involving docks in excess of 900 feet in length.

(7) A copy of the newspaper public notice:

(a) Minor developments (see R.30-1(D)): In the case of applications for minor development permits, the applicant shall publish notice at least once in a newspaper of local circulation in the county of the proposed activity. The newspaper notice should be published within 15 days of the date of Public Notice (see R.30-2(C)). No permit shall be issued by the Department until at least 10 days following the date of newspaper publication. The following form shall be used for newspaper publication:

PUBLIC NOTICE

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

(Name of applicant) will apply (has applied) to SCDHEC-OCRM for a permit to (description of work) for (public/private) use, at/in (location and name of waterway). Comments will be received by (insert local OCRM office address) until (insert date, 10 days after date of this newspaper notice).

(b) Other activities: In the case of applications for other than minor development permits, the applicant shall publish notice at least once in both a newspaper of general statewide circulation (The State, Post and Courier, or The Greenville News) and a newspaper of local circulation in the county of the proposed activity. The newspaper notices should be published within 15 days of the date of Public Notice (see R.30-2(C)). No permit shall be issued by the Department until at least 15 days following the date of the last published newspaper publication. The following form shall be used for newspaper publication:

PUBLIC NOTICE

SC DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

(Name of applicant) will apply (has applied) to SCDHEC-OCRM for a permit to (description of work) for (public/private) use, at/in (location and name of waterway). Comments will be received by SCDHEC-OCRM, (insert Charleston OCRM office address) until (insert date, 15 days after date of this newspaper notice).

(8) When considered appropriate by the Department, additional information may be required. For major development activities this additional information may include but is not limited to a stormwater management plan, approved freshwater wetland delineation, and cultural resource and endangered species survey. The plat or copy of a plat submitted for those activities subject to the Beach Management Act (Sections 48-39-270 through 350) shall show the location of the baseline and setback line, applicable to the subject property. The lines shall be derived from information available from the Department. The lines shall be part of the plat and sealed by a South Carolina Registered Land Surveyor and may not be placed on the application by anyone other than a South Carolina Registered Land Surveyor or a member of the Department staff.

(9) The administrative fees for permit applications are included in R.61-30.G(13).

C. Notification: The Department shall within thirty days of receiving either a Joint Public Notice or SCDHEC-OCRM permit application, notify in writing interested agencies, all adjoining landowners, local government units in which the land is located and other interested persons. This notice shall indicate the nature and extent of the applicant's proposal.

D. Permit Processing: Permit processing shall commence immediately upon receipt of either a Joint Public Notice or a SCDHEC-OCRM permit application and shall proceed concurrently but separately from any Federal authorization.

E. Comments on Application: All interested federal and state agencies, all adjoining landowners, local government units and other interested persons to have thirty days after the receipt of Public Notice of permit application from the Department to file written comments pertaining to the application. Only those comments received within the thirty day period must be considered in the Department's decision on a permit application. Any persons wishing to receive notice of the initial decision on a permit application shall notify the Department within this comment period. Comments on permit applications for minor development activities, as defined in Section 48-39-10(N), must be received within fifteen days after receipt of Public Notice of permit application.

F. Public Information: The complete file on each permit application, including all comments received, will be made available, upon request, for inspection by any member of the general public during regular business hours at the principal office for SCDHEC-OCRM.

G. State Comment: Issuance or denial of the permit by the Department shall be the State comment on the corresponding federal permit application.

H. Water Quality Certificate: If a water quality certificate is not required by a Federal permitting agency under Section 401 of P.L. 92-500, the Department may evaluate whether there is a reasonable assurance the project will not contravene State Water Quality Standards. The Department will not issue a separate 401 water quality certification for an activity which requires a direct permit for alteration of the critical area of the coastal zone pursuant to applicable regulations governing issuance of permits for alternation of the critical area of the coastal zone. The Department will process permit applications pursuant to applicable regulations governing issuance of permits for alteration of the critical area of the coastal zone with coordination and input from appropriate staff regarding water quality impacts. The direct permit will serve as the 401 water quality certification for an associated Federal permit.

I. Applications Involving Adjoining Landowners Claiming Ownership of Critical Area

(1) All permit applicants must provide information in writing concerning the ownership of critical area in or over which a project is to be constructed.

(2) The alleged adjoining landowner of critical area must be notified pursuant to the provisions of Section 48-39-140(C) and R.30-2.

(3) If the alleged adjoining landowner of critical area files a written objection to the permit application within the period prescribed in Section 48-39-140 (15 days for minor and 30 days for major permits) based upon a claim of ownership and indicates an intention to file a court action pursuant to Section 48-39-220, the application will be deemed incomplete and further processing of the permit will not take place until a final judicial decision is rendered by a court of competent jurisdiction. However, written proof of filing a court action pursuant to Section 48-39-220 must be received by the Department within 30 days of the date of the expiration of the comment period. If no such written proof is timely received, the permit will be processed pursuant to law.

(4) If the final judicial decision determines that the critical area in question is owned by the adjoining critical area landowner and that the critical area landowner has a right to exclude others as part of the title, the permit will not be issued unless the applicant presents the Department with a copy of a deed, lease, or other instrument from the adjudicated critical area

landowner that would allow construction of the proposed project, or written permission from such owner to carry out the proposal as provided for in Section 48-39-140(B)(4).

(5) Permit applicants who are vested with the power of eminent domain shall be exempt from the provisions of paragraphs (3) and (4) of R.30-2(I).

30-3. Public Hearings

Section 48-39-140(C) directs the Department to hold public hearings on permit applications if it is deemed necessary. Section 48-39-150(B) requires the Department to convene a public hearing before acting on an application if twenty or more citizens or residents of the affected county or counties request such a hearing. Each request must be in writing and on a separate sheet of paper and be received within thirty days after publication of a Public Notice of the permit application (15 days for a minor activity). In all cases, the public hearing shall be held in the county where the land is located, and if in more than one county, the Department shall determine in which county to hold the hearing or may hold hearings in more than one county. When applicable and practical, joint public hearings will be held with the United States Army Corps of Engineers and/or other agencies.

30-4. Decisions on a Permit.

A. Permit Approval:

(1) The Department is allowed, under, Section 48-39-150(B) to issue a conditional permit approval. Under this provision, the Department may direct the applicant to amend his proposal to take specific measures necessary to protect the public interest. The Department, at its discretion, may seek additional public comment on major modifications to a permit application.

(2) If the Department has approved an application, Section 48-39-150(B) also allows the Department, at its discretion, to support the applicant in a Federal permitting process for the same activity.

B. Permit Denial: A Permit denial shall cite facts upon which the denial was based and the reasons for denial.

C. Action Upon a Permit: The Department according to Section 48-39-150(C) shall act upon an application for a permit within ninety days. This ninety-day period shall begin when the application is administratively complete and filed in approved form. The file is administratively complete when all required information, including fees, newspaper notices, proof of ownership and certifications have been received. Exceptions of the 90-day deadline are applications for minor development activities on which action must be taken in thirty days. Permits are deemed issued after signature by applicant and appropriate OCRM staff. See R.61-30 for further descriptions of the administrative processes governing action on a permit.

D. Completion of Work: Section 48-39-150(F) requires a permit holder to complete work within five years from the date of permit issuance. The Department may extend this five-year period upon showing of good cause indicating that due diligence toward completion of the work has been made, evidenced by significant work progress. The permit holder must request an

extension in writing prior to the permit's expiration date. Permits, which have expired may not be extended. Work shall be continuous and expeditious whenever possible.

E. Property Rights Not Affected; No State Liability; Other Permit Requirements: No permit shall convey, nor be interpreted to convey, a property right in the land or water in which the permitted activity is located. No permit shall be construed as alienating public property for private use or as alienating private property for public use. In no way shall the State be liable for any damage as a result of the erection of permitted works. A SCDHEC-OCRM permit in no way relieves the holder from responsibility for compliance with other applicable Federal, State, or local permit requirements.

F. Legally Commenced Use: Section 48-39-130(C) reads as follows, "Ninety days after the effective date of this act no person shall fill, remove, dredge, drain or erect any structure on or in any way alter any critical area without first obtaining a permit from the Department. Provided, however, that a person who has legally commenced a use such as those evidenced by a state permit, as issued by the Budget and Control Board, or a project loan approved by the rural electrification administration or a local building permit or has received a United States Corps of Engineers or Coast Guard permit, where applicable, may continue such use without obtaining a permit. Any person may request the Department to review any project or activity to determine if he is exempt under this section from the provisions of this act. The Department shall make such determinations within forty-five days from the receipt of any such request."

G. Mitigation Criteria:

(1) The avoidance of tidelands is preferable to mitigation. The mitigation of tideland impacts is considered only after the policies, law, and rules and regulations of the Department have been addressed and the tideland impacts are unavoidable and are allowed by law. Mitigation may be required for any projects impacting tidelands at the discretion of the Department.

(2) Mitigation shall take the form of wetland creation and/or wetland enhancement and restoration. Wetland creation shall be performed at a ratio of 2:1, wetland created to wetland altered, for private projects and 1:1, wetland created to wetland altered, for projects deemed in the public interest. Enhancement and restoration projects should normally be coupled with some wetland creation and must clearly be an improvement ecologically over the existing system. Approved mitigation work must be performed and completed concurrently with permitted work unless otherwise authorized by the Department.

H. Amendment to a Permit: An amendment to a permit can be made without the requirements of a new permit if the proposed change on the amendment does not significantly increase the size or change the use of the permitted project. Otherwise, the amendment proposal will require a fee, a newspaper notice and will be placed on public notice by DHEC-OCRM.

I. After-the-Fact Permits: The staff does not have authority to consider an after-the-fact application unless:

(1) All fines are paid before application;

(2) The permit would legitimize an activity that in the opinion of the Department appears to be a routine permitting matter that would meet all rules and regulations;

(3) Any portion of the activity or structure that is in violation of the Act or rules and regulations is corrected prior to the application;

(4) An after-the-fact application can not be made until conclusion of the administrative appeal, if taken.

30-5. Exceptions.

A. List of Exceptions: Section 48-39-130(D) lists several exceptions which do not require a permit. These are as follows:

(1) The accomplishment of emergency orders of an appointed official of a county or municipality or of the state acting to protect the public health and safety, upon written notification to the Department. However, with regard to the beach/dune critical area, only the use of sandbags, sand scraping, or renourishment, or a combination of them is allowed, in accordance with R.30-5(B) and R.30-15(G).

(2) Hunting, erecting duckblinds, fishing, shellfishing and trapping when and where otherwise permitted by law; the conservation, replenishment and research activities of State agencies and educational institutions; or boating or other recreation provided that such activities cause no material harm to the flora, fauna, physical, or aesthetic resources of the area.

(3) The discharge of treated effluent as permitted by law; provided, however, that the Department shall have the authority to review and comment on all proposed permits that would affect critical areas.

(4) Dredge and fill performed by the United States Corps of Engineers for the maintenance of harbor channels and the collection and disposal of the materials so dredged; provided, however, that the Department shall have authority to review and certify all such proposed dredge and fill activities.

(5) Construction of walkways over sand dunes in accordance with R.30-13(B).

(6) Emergency repairs to an existing bank, dike, fishing pier, or structure other than oceanfront erosion control structures or devices which have been erected in accordance with federal and state laws or provided for by general law acts passed by the General Assembly, if notice is given in writing to the Department within 72 hours of the onset of needed repairs.

(7) Maintenance and repair of drainage and sewer facilities constructed in accordance with federal or State laws, and normal maintenance and repair of any utility or railroad.

(8) Normal maintenance or repair to any pier or walkway, provided that such maintenance or repair shall not involve dredge or fill.

(9) Construction or maintenance of a major utility facility where the utility has obtained a certificate for such facility under "The Utility Facility Siting and Environmental Protection Act" (Sections 58-33-10 through 58-33-430 of the 1976 Code). Provided, however, that the South Carolina Public Service Commission shall make the Department a party to certification proceedings for utility facilities within the coastal zone.

(10) Habitable structures and pools determined to be damaged less than sixty-six and two-thirds percent pursuant to R.30-14(D)(3)(a) and (b) may be repaired after acceptable documentation is provided to the Department.

(11) Erosion control structures or devices determined to be damaged less than eighty percent above grade through June 30, 1995, sixty-six and two-thirds percent above grade from July 1, 1995, through June 30, 2005, or fifty percent above grade after June 30, 2005, pursuant to R.30-14(D)(3)(c) and (d) may be repaired after acceptable documentation is provided to the Department.

B. Notification to the Department of Emergency Orders:

(1) As in A(1) above, the Department must be notified of emergency orders that normally would require a Department permit. Notification to the Department must be made in writing prior to commencement of the activity if possible and must state the following:

(a) the nature of the emergency;

(b) the substance of the emergency order;

(c) the time the order will be issued, or if circumstances preclude prior notice, when the order was issued;

(d) the name of the local official executing the order and the authority under which that person is acting;

(e) the location of the activity ordered;

(f) the estimate of when such order shall be withdrawn.

(2) If the Department is not notified within seventy-two hours of the issuance of the emergency action taken, the official issuing such order or ordering such emergency action shall be in violation of the Act and these rules and regulations. Within seventy-two hours after the emergency order, the official ordering the emergency action shall put the above six elements in writing and file them with the Department.

(3) The official issuing the emergency order shall be deemed in violation of the Act if the emergency conditions do not conform with the definition of emergency in Section 48-39-10(U).

C. Emergency Repairs to any Existing Bank and Dike or Fishing Pier: As in A(6) above, notice by telephone, telegram or radio of emergency repairs to any existing bank, dike or fishing pier must be given to the Department within seventy-two hours from the onset of needed repairs. Within five days after the commencement of repairs, written notification must be filed with the Department. If such notification is not received, the person(s) performing the work will be in violation of the Act and these rules and regulations.

D. Normal Maintenance and Repair: Normal maintenance and repair applies only to work on a structure which has been previously permitted or is grandfathered or exempted and is still generally intact and functional in its present condition. The work may only extend to the original dimensions of the structure, and any expansion, additions, or major rebuilding will require either a Department permit or documentation to and written approval from the Department.

30-6. Contested Case Process for Permitting.

A. Notice of Intent to File a Request for Hearing: Any person adversely affected by the Department's staff's initial permitting application decision has the right to file a request for a contested case hearing before an administrative law judge. Notice of Request for a contested case hearing must be filed with the Department in writing within fifteen days of notification to the applicant and other persons who requested notification of the initial staff action (See R.30-2(E)). The Request shall contain the following information:

- (1) The name of the party requesting the hearing and the issues(s) for which the hearing is requested;
- (2) The permit number or other information sufficient to identify the decision, order, action or inaction which is the subject of the hearing;
- (3) The relief requested.

B. Notification of the Division: The Department shall file the request for a contested case hearing by completing and forwarding a transmittal form to the Administrative Law Judge Division within five days of receipt of the request, and serving a copy on all parties. Upon transmittal, the Division's Rules of Procedure govern jurisdiction of the case.

C. Public Notice:

(1) At the same time as the Department transmits the request for a contested case to the Division, the Department shall notify in writing interested agencies, all adjoining landowners, local government units and other interested persons. This notice shall, to the extent that the information is available, indicate the following:

- (a) The names of all parties including the agency, the petitioner(s) and the permittee(s).
- (b) The initial action of the agency.
- (c) The nature and extent of the contested case.

(2) All parties desiring to intervene in the contested case hearing must file a Motion to Intervene with the Administrative Law Judge Division pursuant to the Division's Rules of Procedure.

D. Review by Coastal Zone Management Appellate Panel. Pursuant to Section 1-23-610, S.C. Code of Laws (1976), for quasi-judicial review of any final decision of an administrative law judge, a petition by an aggrieved party must be filed with the Department and served on the opposing party not more than thirty days after the party receives the final decision and order of the administrative law judge.

E. Decision on Appeal. A decision on the contested case may be made by the Panel immediately after the presentation of oral arguments but, in any case, no later than 65 days after the presentation. Each party shall be notified in writing of the decision. The final Panel decision shall be in the form of a written Final Administrative Order. The Final Administrative Order shall be reviewed by the panel after which it will be signed by the Chairman. The Order shall be served on each party to the case.

30-7. Judicial Appeal.

A. Exhaustion of Administrative Remedies: Pursuant to Section 1-23-380, SC Code of Laws (1976) a party must seek relief through the appeals process set forth in R.30-6 above before seeking judicial review of the agency's action.

B. Time Period for Filing: The 30 day time period for filing an appeal in the circuit court will commence to run from date of receipt of the Panel's Final Administrative Order.

30-8. Enforcement.

A. Permit Revocation Process: All permits issued by the Department are revocable licenses. Section 48-39-50(H) provides that the Department can revoke or suspend permits of persons "who fail or refuse to carry out or comply with the terms or conditions of the permit." Additionally, the Department is charged with the responsibility in Section 48-39-50(M) to implement the state policies and in Section 48-39-50(O) to exercise all incidental powers necessary to carry out the provisions of this chapter. The Department has the right to revoke any permits where materially erroneous or fraudulent information has been provided by either the permit applicant, or resource agencies charged with the responsibility of providing background information for the permitting process. The Department may also revoke any permit where the permittee is violating the terms and/or conditions of the permit, has changed the use of the structure so as to violate the policies or rules and regulations promulgated under the Act, and for inappropriate violations of law. If a determination is made by the Department that there are sufficient grounds for revocation of the permit, the Department shall follow the following procedure:

(1) The permittee shall be notified by the Department of the grounds for revocation of the permit by certified letter or personal service.

(2) The permittee must respond in writing to the written allegations of the Department within 20 days of receipt of the Notice of Intent to Revoke. Failure to timely respond shall result in a Default Order being issued by the Department. The permittee has the right to file a request for a contested case hearing in writing within fifteen days of notification of the Order pursuant to R. 30-6 above. In the event that the permittee agrees that there are grounds for revocation then the Department shall have the authority to issue an order revoking the permit, and take such other action as may be made legally authorized pursuant to the Act.

(3) Pending resolution of revocation action, the Department may suspend work on, and/or use of, the affected project.

B. Cease and Desist Directive: When any person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), or is in violation of the terms and/or conditions of a permit, the Department may issue a cease and desist directive. This directive shall inform the person that he is in violation of the Act and shall cease the unauthorized activity. The Department may then order the person to restore the area to its original condition. If the person responsible for the unauthorized activity refuses to comply with the Department directive, the Department may then file suit in the appropriate circuit court as outlined in Section 48-39-160.

C. Arrest Warrants: When a person is found altering a critical area without a permit and such activity is not exempted by Section 48-39-130(D), has not been authorized by a permit, or is in violation of the terms and/or conditions of a Department permit, the Department may cause to be issued a warrant for the arrest of the violator.

D. Penalties: As stated in Section 48-39-170 any person found guilty of violation of the Act shall be punished by imprisonment of not more than six months or by a fine of not more than five thousand dollars, or both for the first offense; and by imprisonment of not more than one year or by a fine of not more than ten thousand dollars, or both, for each subsequent offense. In lieu of or in addition to any civil fine, the Department may employ other means of enforcement resolution, including but not limited to mitigation or supplemental restoration/enhancement activities.

E. Judicial Enforcement: Section 48-39-160 provides the Department, the Attorney General or any person adversely affected with a remedy to restrain violations of the Act.

F. Enforcement Orders and Enforcement Process: Pursuant to Section 48-39-170, the Department may issue administrative orders requiring persons to comply with any permit, regulation, standard, or requirement under the Act and to restore the environment when deemed appropriate. Prior to issuance of an enforcement order and appeal, the Department shall initiate the following process:

(1) If no acceptable resolution of a violation is reached, the Department shall send an Admission Letter setting forth all facts and grounds for violation.

(2) Within 15 days from receipt of the Admission Letter the responsible party must either admit the contents to be true or send the Department their version of the facts setting forth why the Department's facts are incorrect. Failure to respond shall result in a conclusion by the Department that the contents of letter are true.

(3) If no response is timely made to the Admission Letter, or if the response fails to resolve the Department's concerns, an Enforcement Order shall be issued based on the facts as stated by the Department in the Admission letter.

(4) Once the Enforcement Order is issued the responsible party has 15 days to appeal the Order to the Administrative Law Judge Division pursuant to R.30-6. Failure to act within 15 days will result in the Department seeking enforcement of the order in Circuit Court.

30-9. Other Provisions.

A. Savings Clause: If any provisions of the Act or of these Rules and Regulations are adjudged invalid or unconstitutional, the remainder of the Act and these Rules and Regulations and/or the application of their provisions to other persons or circumstances shall not be affected thereby.

B. Bonding by the Department: To insure that the holder complies with all limitations and conditions of the permit, the Department may, at its discretion, require a secured bond before issuance of the permit. The Department may also require the applicant to submit proof of financial responsibility.

C. Transfer of Permits: Permits are issued in the name of the applicant and may not be assigned to another without written permission of the Department.

D. Declaratory Rulings: Interested persons may petition to the Department for declaratory rulings. The Department shall rule on each petition, in writing, within 45 days of receipt.

30-10. Critical Area Boundaries.

A. Coastal Waters and Tidelands:

(1) The Department has permit authority over the coastal waters and tidelands critical areas defined in Section 48-39-10 as follows:

(a) **"Coastal waters"** means the navigable waters of the United States subject to the ebb and flood of the tide and which are saline waters, shoreward to their mean high-water mark. Provided, however, that the Department may designate boundaries which approximate the mean extent of saline waters until such time as the mean extent of saline waters can be determined scientifically.

(b) **"Tidelands"** means all areas which are at or below mean high tide and coastal wetlands, mudflats, and similar areas that are contiguous or adjacent to coastal waters and are an integral part of the estuarine systems involved. Coastal wetlands include marshes, mudflats, and shallows and means those areas periodically inundated by saline waters whether or not the saline waters reach the area naturally or through artificial water courses and those areas that are normally characterized by the prevalence of saline water vegetation capable of growth and reproduction. Provided, however, nothing in this definition shall apply to wetland areas that are not an integral part of an estuarine system. Further, until such time as the exact geographic extent of this definition can be scientifically determined, the Department shall have the authority to designate its approximate geographic extent.

(2) Using biological field surveys and aerial photography, the Department has found the point on the upper reaches of the estuarine systems where tideland vegetation changes from predominately brackish to predominately fresh and has established a boundary using the nearest recognizable physical features within this area. This boundary has been posted on an official map in SCDHEC-OCRM'S principal offices of business and is available for public review. An approximate description of this boundary is as follows: On the south at the intersection of the South Carolina-Georgia border and the old track bed of the Seaboard Coastline (SCL), approximately 1.75 miles above the U.S. Highway 17-A bridge across the Savannah River;

thence, northeastward along the track bed until its intersection with S. C. 462 near Euhaw Creek; thence, northward along S. C. 462 until its intersection with U.S. Highway 17/U.S. Interstate 95 near Coosawhatchie; thence, northeastward along U.S. 17/U.S. Interstate 95 until U.S. Highway 17 and U.S. Interstate 95 intersect at Point South, thence, northeastward along U.S. 17 until its intersection with S-15-26, approximately two miles east of Green Pond; thence, southward along S-15-26 (Bennetts Point Road) until its intersection with the old SCL track bed near Airy Hall; thence, east-northeastward along the track bed on its intersection with S. C. 174; thence, northward along S. C. 174 for approximately 1.5 miles until its intersection with S. C. 164; thence, east-northeastward approximately three miles along S. C. 164 until its intersection with S. C. 165; thence, northward along S. C. 165 (Bacons Bridge Road) until its intersection with S. C. 642 (Dorchester Road); thence, southeastward along S. C. 642 until its intersection with U.S. Interstate 26; thence, southward along I-26 until its intersection with S. C. 7 (Cosgrove Avenue); thence, northeastward on S. C. 7 until its intersection with the SCL track bed adjacent to S-10-32 (Spruill Avenue); thence, northward along this track bed until its intersection with the Charleston County/Berkeley County line, approximately one-fifth mile north of S-10-13 (Remount Road); thence, east-northeastward along the county line until its intersection with the Cooper River at Goose Creek; thence, eastward by a straight line across the Cooper River and mouth of Yellow House Creek to Jessen Road at the Cainhoy Industrial Park, thence southeastward until its intersection with (Clements Ferry Road); thence, northeastward along S-8-33 until its intersection with S-8-100 (Resurrection Road) until its intersection with S. C. 41, thence northeastward on S-8-100 (Halfway Creek Road); thence, northeastward along S-8-100 until its intersection with S-10-98 (Guerins Creek Bridge Road); thence, southward along S-10-98 until its intersection with U.S. Highway 17; thence, northeastward along U.S. Highway 17 until its intersection with S-27-30 north of the North Santee River; thence, eastward along S-27-30 for approximately five miles; thence, northward along S-27-30 until its intersection with S-27-18; thence, northwestward along S-27-18 until its intersection with U.S. Highway 17 south of Georgetown, thence northeastward along U.S. Highway 17 (Frasier Street) through Georgetown, thence northeastward along U. S. Highway 17 until the intersection of U.S. Highway 17 Business and U.S. Highway 17 Bypass south of Murrells Inlet; thence, northeastward along U.S. Highway 17 Business (Kings Highway) through Murrells Inlet, Garden City, Surfside Beach, and Myrtle Beach until its intersection U.S. Highway 17 north of Myrtle Beach; thence northeastward along U.S. Highway 17 until its intersection with the South Carolina-North Carolina border. In determining the exact location of this boundary, only those lands seaward of the right-of-way line located on the upstream side of road beds and track beds described shall be included in the tidelands and coastal waters critical areas.

(3) All coastal waters and tidelands seaward from this boundary to the State jurisdictional limit are included within the critical areas.

B. Beaches and Beach/Dune System: The Department has permitting authority over beaches and the beach/dune system. In determining the boundaries of this critical area, the Department will be guided by Section 48-39-270, Section 48-39-280 and Section 48-39-360.

30-11. General Guidelines for All Critical Areas.

A. Preface: The critical areas are of vital importance to the State, and there is strong and growing pressure for the development of these areas. The Department has established these rules and regulations for permit applications in an effort to reduce the irreversible loss of productive tidelands, coastal waters, beaches, and dunes while meeting long-range State development needs.

B. General Considerations: In assessing the potential impacts of projects in critical areas, the Department will be guided by the policy statements in Sections 48-39-20 and 48-39-30 and the following ten considerations in Section 48-39-150:

- (1) The extent to which the activity requires a waterfront location or is economically enhanced by its proximity to the water;
- (2) The extent to which the activity would harmfully obstruct the natural flow of navigable water. If the proposed project is in one or more of the State's harbors, or in a waterway used for commercial navigation and shipping, or in an area set aside for port development in an approved management plan, then a certificate from the South Carolina State Ports Authority declaring that the proposed project or activity would not unreasonably interfere with commercial navigation and shipping must be obtained by the Department prior to issuing a permit;
- (3) The extent to which the applicant's completed project would affect the production of fish, shrimp, oysters, crabs, or clams or any marine life or wildlife, or other natural resources in a particular area, including but not limited to water and oxygen supply;
- (4) The extent to which the activity could cause erosion, shoaling of channels or creation of stagnant water;
- (5) The extent to which the development could affect existing public access to tidal and submerged lands, navigable waters and beaches, or other recreational coastal resources;
- (6) The extent to which the development could affect the habitats for rare and endangered species of wildlife or irreplaceable historic and archeological sites of South Carolina's coastal zone;
- (7) The extent of the economic benefits as compared with the benefits from preservation of an area in its unaltered state;
- (8) The extent of any adverse environmental impact which cannot be avoided by reasonable safeguards;
- (9) The extent to which all feasible safeguards are taken to avoid adverse environmental impact resulting from a project;
- (10) The extent to which the proposed use could affect the value and enjoyment of adjacent owners.

C. Further Guidelines: In the fulfilling of its responsibility under Section 48-39-150, the Department must in part base its decisions regarding permit applications on the policies specified in Sections 48-39-20 and 48-39-30, and thus, be guided by the following:

(1) The extent to which long-range, cumulative effects of the project may result within the context of other possible development and the general character of the area.

(2) Where applicable, the extent to which the overall plans and designs of a project can be submitted together and evaluated as a whole, rather than submitted piecemeal and in a fragmented fashion which limits comprehensive evaluation.

(3) The extent and significance of negative impacts on Geographic Areas of Particular Concern (GAPC). The determination of negative impacts will be made by the Department in each case with reference to the priorities of use for the particular GAPC. The priorities of use are found in Chapter IV of the Coastal Management Program.

D. General Guidelines for Beaches and the Beach/Dune System: In addition to the provisions of the South Carolina Coastal Management Act of 1977, the policies of the South Carolina Coastal Management Program, and applicable rules and regulations, the Department shall base its decisions on activities in the beach/dune system on the findings and policies specified in Section 48-39-250 and Section 48-39-260 of the 1977 Coastal Zone Management Act, as amended, and the following:

(1) The Department shall discourage new construction in the beach/dune system and encourage those who have erected structures within the system to retreat.

(2) The Department shall promote soft-solutions to erosion within the context of a policy of retreat of development from the shore and prevent the strengthening and enlargement of existing erosion control structures.

(3) The Department shall promote public access to the beaches of this state.

(4) The Department shall consider state and local comprehensive plans. No permit shall be issued which is inconsistent with the state plan, and all permits issued shall be consistent with local plans to the maximum extent practicable.

(5) The Department shall be guided by the prohibitions against construction contained in Section 48-39-290 and Section 48-39-300 which are based upon the conclusion that ill-planned development, whether habitable structures, recreational amenities, erosion control devices or other manmade structures, will now and in the future adversely impact the fragile beach/dune system. These structures interfere with the natural system and impact the highest and best uses of the system. In order to protect the highest and best uses of the beach/dune system, the Department, in its management capacity, shall encourage minimal development therein.

(6) The destruction of beach or dune vegetation seaward of the setback line is prohibited unless there is no feasible alternative. When there is destruction of vegetation permitted seaward of the setback line, mitigation, in the form of planting new vegetation to rectify the destruction is required as a permit condition. In no event shall any part of a building be constructed on a primary oceanfront sand dune.

E. Abandoned Vessels and Structures. Abandoned vessels and structures, as defined in R.30-1(D) have the potential to harm critical area environments through their physical presence and the release of contaminants that may be associated with them. In addition, they may also be a hazard to navigation, public access and sources of unsightly and dangerous floating debris as they deteriorate and break apart. Specific standards for abandoned vessels and structures are as follows:

- (1) Vessels or structures determined to be abandoned by OCRM may be required to be removed from the critical area.
- (2) Upon notification by OCRM, the owner of the abandoned vessel or structure will have 30 days from date of notification to remove it from the critical area at his or her expense.
- (3) Abandoned boats, barges, or other watercraft whose ownership cannot be established may be removed from the critical area by any person, at their expense, and in accordance with Section 50-23-135 of the SC Code of Laws, 1976.
- (4) Structures, other than watercraft, whose ownership cannot be established may be removed by any person, at their expense, provided notification is provided to OCRM prior to removal. Such notification shall include date and method of removal.
- (5) OCRM may require a Department permit for removal of any vessel or structure if it is deemed that the removal process will significantly impact the surrounding marsh environment.

30-12. Specific Project Standards for Tidelands and Coastal Waters.

(A) Docks and Piers: A dock or pier is a structure built over and/or floating on water and is used to provide access to water and for the mooring of boats. Docks and piers are the most popular method of gaining access to deep water. Docks and piers sometimes pose navigational problems, restrict public use of the water and, under certain circumstances, possess potential for creating environmental problems. This section is divided in five parts providing standards for 1) all, 2) private and joint use, 3) master planned, 4) commercial and (5) community docks. Docks are defined in 30-1.D(16) Docks. Community docks have less environmental impact than multiple private or joint use docks. One or more community dock(s) in a development will be permitted when sufficient numbers of private or joint use docks are eliminated and other applicable Department regulations are met. This section does not include standards for marinas, which are addressed in 30-12.E. Marinas by definition include docks with more than 250 linear feet of effective docking space.

(1) The following standards are applicable for construction of all docks and piers:

- (a) Docks and piers shall be limited to one structure per parcel and shall not restrict the reasonable navigation or public use of State lands and waters;
- (b) Docks and piers shall be constructed in a manner that does not restrict water flow;
- (c) The size and extension of a dock or pier must be limited to that which is reasonable for the intended use;

(d) Docks and piers should use the least environmentally damaging alignment;

(e) All applications for docks and piers should accurately illustrate the alignment of property boundaries with adjacent owners and show the distance of the proposed dock from such extended property boundaries. For the purpose of this section, the extension of these boundaries will be an extension of the high ground property line. The Department may consider an alternative alignment if site specific characteristics warrant or in the case of dock master plans, when appropriate.

(f) Walkways leading to the dock or pier should be elevated at least three feet above mean high water.

(g) Dry storage in uplands will be encouraged in preference to moorage in crowded areas;

(h) Developers of subdivisions and multiple family dwellings are encouraged to develop plans which include joint-use docks and/or community docks at the time of required dock master plans. Dock corridors on the approved Dock Master Plan (DMP) must be shown with bearings or State Plane Coordinates on a recordable subdivision plat for the development, and recorded in the appropriate County Office of Deeds. Subsequent re-surveys or modifications to lots shall reference the dock corridors on the recorded subdivision plat and be submitted to the Department. Reference to this DMP must be given in all contracts for lot sales.

(i) Project proposals shall include facilities for the proper handling of litter, waste, refuse and petroleum products, where applicable;

(j) Where docks and piers are to be constructed over tidelands utilized for shellfish culture or other mariculture activity, the Department will consider rights of the lessee and the public prior to approval or denial.

(k) Docks cannot be enclosed by walls or screens.

(l) Docks longer than 1,000 feet over critical area are prohibited. This is inclusive of pierheads, floats, boatlifts, ramps, mooring pilings and other associated structures.

(m) Handrails, if proposed, shall be limited to a maximum height of 36" above the walkway or pierhead decking.

(n) Docks must extend to the first navigable creek, within extensions of upland property lines or corridor lines, that has a defined channel as evidenced by a significant change in grade with the surrounding marsh; or having an established history of navigational access or use. Rare geographic circumstances, such as very close proximity of a significantly larger creek within extensions of property or corridor lines, may warrant dock extension to a creek other than the first navigable creek. A creek with an established history of navigational use may also be considered as navigable. Such creeks cannot be bridged in order to obtain access to deeper water.

However, pierheads must be located over open water and floating docks that rest upon the bottom at mean low tide will not normally be permitted. In exceptional cases, the Department may allow an open water channel to be bridged if current access is prohibited by other man made or natural restrictions or if site-specific conditions warrant such a crossing.

(o) This section applies to lots subdivided or resubdivided after May 23, 1993. Additionally, lots subdivided or resubdivided after June 27, 1997 must meet the minimum, local requirements to construct a habitable structure in order to qualify for a dock.

(i) To be eligible for a private, community or commercial dock, a lot must have:

(a) 75 feet of frontage at the marsh edge, and

(b) 75 feet between its extended property lines at the location in the waterbody of the proposed dock.

(ii) Joint use docks will be considered for adjacent waterfront properties each of which must have:

(a) 50 feet of frontage at the marsh edge, and

(b) 50 feet between its extended property lines at the location in the waterbody of the proposed dock.

(iii) Lots less than 50 feet wide are not eligible for a dock.

(p) No docks, pierheads or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of joint use docks shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

(q) If a dock is destroyed, the dock may be rebuilt to its previous configuration so long as reconstruction is completed within five years of the date of the event unless there are extenuating circumstances justifying more time.

(r) In the event that a dock owner intends to change the use of a dock from the permitted use or non-permitted grandfathered use, a new permit must be obtained prior to the change in use. The change in use is based on the types of docks distinguished by these regulations.

(2) The following standards in addition to those in R.30-12(A)(1) are applicable for the construction of private and joint use docks:

(a) Storage on docks will be limited to a bench-like locker no larger than 3 feet high, by 3 feet deep, by eight feet long.

(b) Walkways leading to a dock or pier shall not exceed 4 feet in width. For handicapped access, the Department may utilize The Americans with Disabilities Act (ADA) recommendations for walkway width and other structural configurations. Reference 28 CFR Part 36.

(c) The Department sets forth the following standards for size and use of pierheads and floating docks. Total allowable dock square footage as used in this section includes the areas of any fixed pierheads, floating docks, the area of boat storage docks, additional areas covered by a roof, and areas bounded by an unroofed boat lift, davit or similar structure; and excludes walkways, ramps, mooring buoys, and mooring piles. For boatlifts, davits, or similar structures the square footage will be determined by the area bounded by the structure or 120 square feet, whichever is greater. Where otherwise allowed by these regulations, the Department will allow an applicant to choose either one boat lift or one boat storage dock with an impact area not to exceed 160 square feet that will not count against the total allowable dock square footage. For purposes of determining creek width, if marsh vegetation does not exist, the Department will utilize other indicators of channel width such as changes in grade and the critical area boundary. Lots in subdivisions with approved DMPs as of May 24, 2002, are exempt from R.30-12.A(2)(c)(i) and (ii) as amended on May 24, 2002. R.30-12.A(2)(c)(i) and (ii) as amended on May 24, 2002, does not apply to lots of record that existed as of May 24, 2002, until the later of July 1, 2007, or the expiration of any permit issued prior to that date.

(i) Docks will not be permitted on creeks less than 10 feet wide as measured from marsh vegetation on each side.

(ii) Docks will not be permitted on creeks less than 20 feet wide as measured from marsh vegetation on each side unless one of the following two special geographic circumstances exists: a lot has greater than 500 feet of water frontage or no potential access via dockage from the opposite side of the creek. If special geographic circumstances exist, total allowable dock square footage will be restricted to 50 square feet. Boat lifts, davits, and boat storage docks will not be permitted on any dock allowed in creeks less than 20 feet wide.

(iii) On creeks between 20 and 50 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 120 square feet unless special geographic circumstances and land uses warrant a larger structure.

(iv) On creeks between 51 and 150 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 160 square feet unless special geographic circumstances and land uses warrant a larger structure.

(v) On creeks larger than 150 feet, as measured from marsh vegetation on each side, total allowable dock square footage shall be restricted to 600 square feet unless special geographic circumstances and land uses warrant a larger structure;.

(vi) Grandfathered or previously permitted fixed and floating docks which are larger than allowed in R.30-12(A)(2)(c)(ii-v) may not be enlarged.

(vii) Enclosed boathouses are prohibited.

(viii) Boats moored at docks cannot restrict the reasonable navigation or public use of State lands and waters. Under no circumstance are live-aboards allowed at private docks. Commercial activities are prohibited at private docks unless they are water-dependent and approved by the Department. Illegal use of a private dock is grounds for permit revocation.

(ix) Boat storage docks, elevated boatlifts or davits will not count against the total dock square footage as outlined in 30-12.A(2)(c)(ii-vi) if the size of the structure is 8 feet by 20 feet or less. The area of any larger structure greater than 160 square feet will count against the total allowable dock square footage.

(d) Roofs on private docks will be permitted on a case-by-case basis, with consideration given to the individual merits of each application. Precedent in the vicinity for similar structures will be considered as well as the potential for impacting the view of others. Roofs that have the potential to seriously impact views will not be allowed, while those that have minimal impact may be allowed. The following standards will be used in evaluating applications for roofs.

(i) Roofs shall be clearly shown on the public notice application drawings, and described in the written description of the project. Attics or enclosed ceiling storage on roofed docks are prohibited.

(ii) Flat roofs are prohibited. Where a roof is otherwise permissible, maximum allowable roof height shall be 12' as measured from the floor decking of the dock to the highest point of the roof including any ornamental structures.

(iii) Rails on decks are not to be incorporated into roofs and no steps, ladders or other means of accessing the roof on a permanent basis are allowed.

(e) Boat lifts or davit systems are allowed, provided the entire docking system is limited to the minimum structure size needed to accomplish the intended use. The following standards will be used in evaluating applications for boatlifts and davits:

(i) Single family docking facilities will be normally limited to one lift per structure.

(ii) Hull scraping, sandblasting, painting, paint removal, and major engine repair are prohibited on lifts and davits.

(iii) Boat lifts must be open sided with no enclosures. Catwalks are allowed to provide access on one side and shall be a maximum of 3 feet wide.

(3) The following procedures in addition to those in R.30-12(A)(1) will be followed for docks covered by Dock Master Plans (DMPs):

(a) A permit may be issued for docks covered by a DMP, as outlined in CH.III.VI.D of the Coastal Zone Management Plan. This permit for multiple docks must be placed on public notice and processed as a major application. If a DMP is approved by the Department, but no permit is

applied for or issued, the approved DMP will be used as a framework for future permitting decisions, subject to comments received during the public review process.

(b) Before individual structures covered by the permit are constructed, written notice must be given to and a construction placard received from the Department to insure the docks are built according to the plan.

(c) Major modifications of individual structures that would require a new public notice will not be permitted; however those modifications that are minor in nature will be considered as long as the request is in keeping with the spirit of the DMP.

(d) If the permit expires before all of the docks permitted have been constructed, subsequent permit applications for the remaining structures will be reviewed for consistency with the DMP unless the DMP no longer reflects Department policies and regulations.

(e) Extensions of permits for multiple docks will be issued upon a showing of significant activity under the permit.

(4) The following standards in addition to those in R.30-12(A)(1) apply to construction of commercial docks that are not marinas:

(a) The size and extension of the dock must be limited to that which is reasonable for the intended use and the geographic circumstances of the site. However, no docks will be permitted in creeks less than 20 feet wide as measured from marsh vegetation on each side.

(b) Each applicant for a commercial dock must submit an Operations and Maintenance Manual with the permit application.

(c) New commercial docks are not allowed in waters classified for shellfish harvesting if their proposed uses would result in the closure of additional waters for shellfish harvesting.

(d) Commercial docks should be located in areas that will have minimal adverse impact on wetlands, water quality, wildlife and marine resources, or other critical habitats.

(e) Where commercial dock construction would affect shellfish areas, the Department must consider the rights of the lessee, if applicable, and the public, as well as any possible detrimental impacts on shellfish resources.

(f) Project proposals shall include facilities for the proper handling of litter, waste and other refuse in accordance with DHEC regulations.

(g) Adequate parking for users of the commercial dock shall be demonstrated.

(h) The criteria for determining roof construction described in 30-12A(2)c apply to commercial docks.

(5) The following standards in addition to those in R.30-12(A)(1) apply to construction of community docks that are not marinas:

(a) The size and extension of the community dock must be limited to that which is reasonable for the intended use.

(b) No leasing or other transfer of space to individuals who do not reside in the community or other commercial uses are allowed at community docks.

(c) Community docks are strongly encouraged and will only be permitted in lieu of multiple single-family docks. Eliminating private docks on small creeks in exchange for permitting of community docks on larger waterbodies minimizes environmental impacts. If a sufficient number of private docks are eliminated, the Department will consider permitting more than one community dock for a subdivision provided no applicable Department regulations are contravened. The ratio for determining community dock size (or slip moorage) in exchange for single-family docks will be 2 to 1 or 40 feet of community dock length for each private dock that is eliminated. If a joint use dock is eliminated, the number of lots served by the dock will count as the number of docks eliminated.

(d) No section of any community dock (pierheads or other associated structures) will be permitted closer than 20 feet from extended property lines. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

(e) Community docks will be prohibited on creeks less than 20 feet in width, however on creeks larger than 20 feet the size of the structure will be determined by the language in 30-12.A(5)(a) as well as (c).

(f) Walkways leading to a dock or pier shall not exceed 6 feet in width. For handicapped access, the Department may utilize The Americans with Disabilities Act (ADA) recommendations for walkway width and other structural configurations. Reference 28 CFR Part 36.

B. Boat ramps:

(1) Boat ramps provide access to the water for those who do not have water access by means of docks, piers, or marinas. However, boat ramp construction may require filling or, in some cases, dredging of wetland areas.

(2) Specific standards which shall apply are as follows:

(a) Filling or excavating of vegetated wetlands for boat ramp construction is prohibited unless no feasible alternatives exist in non-vegetated wetland areas. In addition, the area to be filled or excavated must be limited to that which is reasonable for the intended use;

(b) Boat ramps must consist of environmentally acceptable materials, demonstrate sound design and construction so that they could reasonably be expected to be safe and effective, and minimize adverse effects.

(c) Justification for boat ramp construction in environmentally sensitive areas shall be considered using the following priorities:

(i) Public use - open to all citizens;

(ii) restricted use - open to citizens of a particular area or organization only;

(iii) private use - use for one citizen or family;

(d) In cases where private use is necessary, siting of ramps must, wherever feasible, be located in areas where the least environmental impact will accrue to the area and be limited to 12 feet in width;

(e) Boat ramp location requiring dredging or filling of wetlands to provide deep water access to the ramp, parking areas for the ramp, or other associated facilities are prohibited unless no feasible alternatives exist and environmental impacts can be minimized;

(f) The siting of "public use" boat ramps is encouraged in easily accessible areas such as bridges and existing, abandoned causeways, provided that these sites comply with other applicable regulations.

C. Bulkheads and Revetments (Rip-rap) (Other than ocean front, as covered under R.30-13(N)):

(1) In an attempt to mitigate certain environmental losses that can be caused by these structures, the following standards are adopted:

(a) Structures must be designed to conform to the critical area line (upland boundary), to the maximum extent feasible, and constructed so that reflective wave energy does not destroy stable marine bottoms or constitute a safety hazard;

(b) Structures may be constructed up to 18 inches from the existing escarpment. In situations where this is not feasible, Department staff will determine the location of the bulkhead or revetment on a site by site basis;

(c) Bulkheads and revetments will be prohibited where marshlands are adequately serving as an erosion buffer, where adjacent property could be detrimentally affected by erosion, sedimentation, or where public access is adversely affected unless upland is being lost due to tidally induced erosion.;

(d) Bulkheads and revetments will be prohibited where public access is adversely affected unless no feasible alternative exists.

D. Cables, Pipelines, and Transmission Lines:

(1) Installation of cables, pipelines, and transmission lines is preferred in non-wetland areas. Excavating activities in critical areas are sometimes required with the preferred alternative being directional boring. Excavation and filling also are sometimes required to construct foundation structures attendant to the installation of overhead transmission line crossings. These installations shall be designed to minimize adverse environmental impacts.

(2) In addition to standards for dredging and filling, the following standards are applicable:

- (a) To the maximum extent feasible, alignments must avoid crossing the critical areas;
- (b) Creation of permanent open water canals to install pipelines is prohibited since such projects usually interfere with drainage patterns and may adversely affect water quality through accelerated bank erosion;
- (c) Dimensions of temporarily excavated canals for cables and pipelines should be minimal. Silt curtains are required for all excavations;
- (d) Wherever feasible, all excavations in wetland areas must be backfilled with the excavated material after installation of the appropriate structure, while being careful to maintain the original marsh elevation. In addition, excavated material must be stockpiled on highground whenever feasible;
- (e) Appropriate erosion control measures shall be employed during the crossing of wetland areas. Where appropriate, revegetation with suitable wetland species will be required;
- (f) Alignments of new projects should be designed to utilize existing rights-of-way and topographic features, wherever feasible;
- (g) The extension of public services, such as sewer and water facilities, involving the expenditure of public funds or issuance of government revenue bonds to previously undeveloped barrier islands will not be approved unless an overriding public interest can be demonstrated.

E. Marinas, including commercial and community docks with more than 250 linear feet of effective docking space.

(1) In addition to standards applicable for bulkheads and seawalls, dredging and filling, and navigation channels and access canals, the following standards apply to all structures defined as marinas in 30-1(D):

- (a) Each applicant for a marina must submit an Operations and Maintenance Manual with the permit application. This Operations and Maintenance Manual must be in accordance with 30-12(E)(6), and approved in writing by the Department staff. The requirements for the Operations and Maintenance Manual may be modified if deemed necessary by the Department.
- (b) All marinas affect aquatic habitats to some degree, but adverse effects can be minimized by utilizing proper location and design features. Applications for marinas shall include a comprehensive site plan showing location and number of all water-dependent and upland facilities such as parking and storage facilities.
- (c) New marinas, which includes all structures defined as marinas in 30-1(D), are not allowed in waters classified for shellfish harvesting, except for any locked harbor, dry stack or expanded existing marina that does not close any additional waters for shellfish harvesting.

(i) An applicant for any marina in waters classified for shellfish harvesting, can request that the S.C. Department of Natural Resources (DNR) comment in writing on whether the area around the proposed marina is suitable or not suitable for the natural growth and propagation of shellfish. The permit shall not be issued unless the Department, after giving great weight to the comments of the DNR, determines that natural physical conditions in the area surrounding the proposed marina preclude the natural propagation of shellfish.

(ii) The DNR's comments shall be based on criteria including:

- (1) intertidal bottom types (including shell matrix depth and composition - shell, clay, silt);
- (2) density of naturally occurring oyster beds (oyster strata types, bottom coverage, acreage);
- (3) presence or absence of significant subtidal oyster populations;
- (4) water depth;
- (5) oyster population elevations;
- (6) salinity regimes (including a review of historic data and recognition of possible future changes that could affect hydrography);
- (7) presence or absence of significant clam populations;
- (8) potential for expansion of existing natural oyster beds through cultivation;
- (9) potential for shellfish production with non-traditional methods;
- (10) the current shellfish management and water quality classifications;
- (11) and any other factors relating to the natural physical conditions in the area deemed appropriate by the DNR including whether the area is likely to support the natural growth and propagation of shellfish in the reasonably foreseeable future.

(iii) This determination in no way affects or limits the ability of DNR to comment on the entire permit application before the Department.

(d) Marinas should be located in areas that will have minimal adverse impact on wetlands, water quality, wildlife and marine resources, or other critical habitats;

(e) Marinas must extend to the first navigable creek, within extensions of upland property lines or corridor lines, that has a defined channel as evidenced by a significant change in grade with the surrounding marsh; or having an established history of navigational access or use. Rare geographic circumstances, such as very close proximity of a significantly larger creek within extensions of property or corridor lines, may warrant marina extension to a creek other than the first navigable creek. A creek with an established history of navigational use may also be considered as navigable. Such creeks cannot be bridged in order to obtain access to deeper water.

However, pierheads must be located over open water and floating docks which rest upon the bottom at mean low tide will not normally be permitted. In exceptional cases, the Department may allow an open water channel to be bridged if other man made or natural restrictions prohibit current access or if site-specific conditions warrant such a crossing.

(f) To be eligible for a marina, a lot must have a minimum of 150 feet of frontage at the marsh edge, and 150 feet between its extended property lines at the location in the waterbody of the proposed structure.

(g) No marinas or other associated structures will be permitted closer than 20 feet from extended property lines with the exception of common marinas shared by two adjoining property owners. However, the Department may allow construction closer than 20 feet or over extended property lines where there is no material harm to the policies of the Act.

(h) Existing permitted and grandfathered marinas as of the effective date of these regulations may be maintained and rebuilt to their pre-existing size and configuration if damaged or destroyed. However, these marinas cannot expand beyond their current footprint if such expansion violates the requirements of 30-12.E(1)(g) and (h). Marinas that do not meet the frontage and offset requirements of 30-12.E(1)(g) and (h) may expand channelward provided all other applicable Department standards are met. Additionally, at such time as these marinas expand, even when remaining within their existing footprint, a permit will be required and applicable Department standards, including 30-12.E(2) and (3) relating to operation and maintenance, must be met.

(i) Marinas proposed for the exclusive use of occupants of the adjoining development will only be permitted in lieu of multiple private docks. Eliminating private docks on small creeks in exchange for permitting a marina with private slips on a larger waterbody is the preferred alternative of the Department. To determine the number of slips allowed within this type of marina, a ratio of 2.5 to 1 or 50 feet of slip length for every private dock (or lot served by a joint use dock) eliminated will be utilized. No leasing, or other transfer of space to individuals who do not reside in the community or other commercial uses are allowed at these marinas.

(j) Marinas shall not restrict the reasonable navigation or public use of State lands and waters.

(k) Marinas shall be constructed in a manner that does not restrict water flow and must avoid or minimize the disruption of currents. Dead-end or deep canals without adequate circulation or tidal flushing will not be permitted.

(l) The size and extension of the marina must be limited to that which is reasonable for the intended use.

(m) Marinas should use the least environmentally damaging alignment.

(n) Where marina construction would affect shellfish areas, the Department must consider the rights of the lessee, if applicable, and the public, and any possible detrimental impacts on shellfish resources.

(o) Marinas should be located in areas where the least initial and maintenance dredging will be required. New marinas that require initial and maintenance dredging must provide a permanent, dedicated spoil area capable of holding both the initial dredge volume and all anticipated maintenance needs. This spoil area must be reserved using deed restrictions or other legal instruments.

(p) Marinas must avoid or minimize the disruption of currents. Dead-end or deep canals without adequate circulation or tidal flushing will not be permitted.

(q) Marina design must minimize the need for the excavation and filling of shoreline areas.

(r) Open dockage extending to deep water is preferable to excavation for boat basins, and it must be considered as an alternative to dredging and bulkheading for marinas.

(s) Turning basins and navigation channels shall be designed to prevent long-term degradation of water quality. In areas where there is poor water circulation, the depth of boat basins and access canals should not exceed that of the receiving body of water to protect water quality.

(t) Project proposals shall include facilities for the proper handling of petroleum products, sewage, litter, waste, and other refuse in accordance with Department regulations.

(u) Dry storage type marinas are preferred whenever feasible, and an applicant for a marina permit will be required to show why a dry storage facility is infeasible, in whole or in part. Infeasibility may be shown where the applicant seeks a facility for large boats that cannot be accommodated in a dry storage facility or where there is inadequate upland space for the facility.

(v) Applications for marinas must include maintenance dredging schedules and dredged material disposal sites when applicable.

(w) Adequate parking for users of the marina shall be demonstrated as either one parking space for every three wet and/or dry slips or the spaces required by the applicable local government parking regulation, whichever is greater.

(x) Mooring fields associated with marinas are encouraged in place of pierheads and floating docks where the size of the waterbody and other site specific conditions are suitable. These mooring fields must be in compliance with R.30-12(P).

(2) The following standard conditions, along with any special conditions that may be appropriate, will be included in all permits for marinas unless the Department determines that such standard conditions are inappropriate

(a) The operations of the marina shall be reviewed by the Department as deemed appropriate, but at least every five years. Based on this review, the Department may require, among other things, changes or additions to the Operations and Maintenance Manual to address any water quality or other environmental problems, and a reduction in the size of, or a change in the configuration of, the marina. Such action may be taken at any time the Department determines that significant state water quality compliance problems exist, at the time the Department enlarges the closure area, or at the time of a review.

(b) A water quality sampling program must be instituted and results submitted to the Department. This sampling program must be performed prior to construction and as specified in 30-12(E)(3)(c) below. This sampling must be performed by a Department certified laboratory at the expense of the permittee. If water quality monitoring indicates a decline in water quality, remedial action will be required.

(c) Dredging must be performed in accordance with 30-12(E)(3)(d) and 30-12(G).

(d) A stormwater plan for the marina and associated parking areas, including runoff from the permanent spoil disposal area and adjacent highland development, must be submitted to and approved in writing by the Department staff before any work is performed under the Department permit.

(3) The Operations and Maintenance Manual shall be submitted with the application and placed on public notice. This requirement may be waived at the discretion of the Department upon a determination that the uses of the facility warrant such a waiver. Depending on the type of facility, it shall contain the following information:

(a) Marina Operations

(i) An experienced operator shall be in charge of the marina. The permittee and its agents are responsible for compliance with the issued Operations and Maintenance Manual and with all conditions of the permit.

(ii) The marina permittee must include in the lease agreement with boat owners a provision requiring that boat owners comply with all applicable State and federal regulations. The marina permittee shall ensure that violations are reported promptly to the proper authorities.

(iii) A complete copy of the marina permit, including any required marina report, the Operations and Maintenance Manual, all conditions or requirements placed on the permit and copies of all water quality monitoring reports required pursuant to the permit, shall be readily available at the marina.

(iv) The marina permittee shall prominently display and distribute material pertaining to the maintenance of water quality standards at the marina and report violations of such standards to the proper authorities.

(b) Water Quality Management:

(i) Adequate working wastewater pump-out facilities shall be provided at each marina (unless specific exceptions are allowed in writing by the Department). These facilities must be adequate to handle all wastewater generated at the marina. The marina operator may charge a reasonable fee for the use of the pump-out facilities.

(ii) Adequate bathroom facilities must be provided in order to discourage any overboard discharge of sewage from boats. The number of toilets required for any given marina shall be determined by the nature and size of the marina and by its specific site location. However, two toilets and one lavatory for women and one toilet, one urinal, and one lavatory for men shall be required for all marinas with one hundred or fewer slips, and unless there are mitigating circumstances, the Department shall require one toilet and one lavatory for women and one toilet, one urinal, and one lavatory for men for every additional 100 boat slips or fraction thereof. Toilet facilities shall be constructed in a location to encourage their use. Additional facilities may be required where restaurants, motels, laundries, and other nonwater-dependent structures are located in close proximity to the marina. All pump-out and sewage facilities must be included in the public notice and certified in writing by the Department.

(iii) Plans for potable water supplied to the marina docks must be approved in writing by the Department.

(iv) Marina boat fueling systems must be equipped with emergency cutoffs at the harbor master's office, at the tank, at the pump and at the dock's edge.

(v) Depending on the size and type of boats using the marina, adequate booms must be available to isolate any oil spill around the fuel dock, a leaking boat, or a sunken boat.

(vi) Absorbent pads must be available at the marina for boat use and for removing incidental spills during fueling operations.

(vii) The discharge of sewage from boats is prohibited unless it is treated by a Marine Sanitation Device and complies with all applicable federal laws and regulations. The discharge of any other kind of waste into state waters, including, without limitation, garbage, refuse, trash or debris, is prohibited.

(viii) Adequate separate refuse containers for garbage shall be available at the marina and maintained daily. Containers for toxic substances shall not be placed over or near the water.

(ix) Boat repairs, paint scraping, boat painting, and other activities that may result in a discharge of waste or pollutants into State waters are prohibited;

(x) One reasonably sized dock master's office may be constructed within a permitted marina. This office will be limited to water dependent uses only such as fuel sales. Restroom facilities may be placed in this office, however, food and beverage services, clothing sales and other non-water dependent uses are prohibited.

(c) **Water Quality Monitoring Requirements** The specific program shall be determined by the Department. Any changes in requirements must be approved in writing by the Department. Sampling results must be supplied to the Department. The program may be discontinued or waived by the Department upon a showing that such information is not necessary to insure adequate protection of coastal resources.

(i) Monitoring requirements shall be tailored to the marina based on factors such as flushing, existing water quality, presence of shellfish, number of slips, and presence of fueling facilities.

(ii) A minimum standard monitoring program will consist of an annual sediment analysis. These samples shall be taken once a year between June and August with a minimum of one composite sample taken within the confines of the marina and one sample taken outside the marina. All sampling sites must be approved in writing by the Department staff and the DNR. Samples will be analyzed for polyaromatic hydrocarbons, copper, zinc, lead, cadmium, chromium, and any other parameters required by the Department

(iii) Marinas in poorly flushed areas may be required to sample other parameters such as dissolved oxygen and/or fecal coliform bacteria. These monitoring requirements will be determined on a site-specific basis using the factors presented in (i) above.

(iv) Sampling requirements will be periodically reviewed and may be increased or reduced as conditions warrant.

(d) Dredging:

(i) Unless otherwise allowed by permit, all initial and maintenance dredging shall take place between December 1 and March 1, and all dredging shall be performed by hydraulic dredge.

(ii) Agitation dredging is prohibited.

F. Transportation:

(1) There is often a strong public need for transportation projects. Unfortunately, such projects can pose a significant risk of environmental degradation. However, careful consideration of environmental factors can guide development toward more favorable results. To the maximum extent possible, environmental considerations shall be harmonious with public safety considerations.

(2) The specific standards are as follows:

(a) In the planning of major transportation routes and airports, these projects should be sited for location inland from the critical areas;

(b) The location and design of public and private transportation projects must avoid the critical areas to the maximum extent feasible. Where coastal waters and tidelands cannot be avoided, bridging rather than filling of these areas will be required to the maximum extent feasible;

(c) Where wetlands will be destroyed, their value as wetlands will be assessed by the Department and weighed against public need for their destruction;

(d) To the maximum extent feasible, transportation structures must be designed so as not to alter the natural water flow and circulation regimes or create excessive shoaling or erosion. Where applicable, adequate clearance for commercial and pleasure craft must be provided;

(e) Where feasible, maximum care shall be taken to prevent the direct drainage of runoff water from transportation routes and associated facilities from entering adjacent water bodies;

(f) Where appropriate, bridges and approaches should be designed to provide for the enhancement of public access by the utilization of fishermen, catwalks, boat launching ramps, bike lanes and other structural features;

(g) During the planning of a multi-lane widening or improvement project, it is preferable to follow the existing alignment in wetland areas. Existing causeway and fill areas must be utilized wherever possible. The degree to which any existing causeway through wetlands can be widened must be reasonably proportionate to the expected traffic load of the causeway in the near future and the size and use of the area being provided access. The width of medians of divided highways must be reduced as much as possible wherever they cross wetland areas;

(h) Roadway embankments and fill areas shall be stabilized by utilizing appropriate erosion devices and/or techniques in order to minimize erosion and water quality degradation problems. Culverts shall be required, where appropriate, in order to maintain normal tidal influence and minimize disruption of drainage patterns;

(i) The Department will require applicants for transportation project permits to consider the accommodation of other public utilities in facility design, thus avoiding unnecessary future alteration such as that caused by the laying of cables or transmission lines in wetlands adjacent to an existing roadway;

(j) New road or bridge projects involving the expenditure of public funds to provide access to previously undeveloped barrier islands will not be approved unless an overriding public interest can be demonstrated.

G. Dredging and Filling:

(1) Development of wetland areas often has been considered synonymous with dredging and filling activities. Dredging and filling in wetlands can always be expected to have adverse environmental consequences; therefore, the Department discourages dredging and filling. There are cases, however, where such unavoidable environmental effects are justified if legitimate public needs are to be met.

(2) The specific standards are as follows:

(a) The creation of commercial and residential lots strictly for private gain is not a legitimate justification for the filling of wetlands. Permit applications for the filling of wetlands and submerged lands for these purposes shall be denied, except for erosion control, see R.30-12(C), or boat ramps, see R.30-12(B). All other dredge and fill activities not in the public interest will be discouraged;

(b) Dredging and filling in wetland areas should be undertaken only if that activity is water-dependent and there are no feasible alternatives;

(c) To the maximum extent feasible, dredging and filling activities should be restricted in nursery areas and shellfish grounds and during periods of migration, spawning, and early development of important sport and commercial species;

(d) Dredging and excavation shall not create stagnant water conditions, lethal fish entrapments, or deposit sumps or otherwise contribute to water quality degradation;

(e) Designs for dredging and excavation projects shall, where feasible, include protective measures such as silt curtains, diapers, and weirs to protect water quality in adjacent areas during construction by preventing the dispersal of silt materials;

(f) Dredged materials shall be deposited and contained in such a manner so as to prevent dispersal into adjacent wetland areas and, in all cases, new facilities must have permanent upland disposal sites. Existing facilities must have either permanent upland disposal sites or EPA approved ocean disposal sites;

(g) Applications for dredging in submerged and wetland areas for purposes other than access, navigation, mining, or drainage shall be denied, unless an overriding public interest can be demonstrated. Dredging permits for mining will be issued only as specified in (2)(h) below. Drainage permits must be consistent with the provisions in R.30-12(L);

(h) Applications for dredging for mining activities within the critical areas will be denied unless a significant portion of the resource is located in the critical area, extraction of the resource is clearly necessary, and benefits derived from extraction would outweigh resultant detrimental impacts on coastal ecosystems. For any permit issued to allow dredging for mining operations in the critical areas, a complete site reclamation plan shall be required;

(i) Wetlands shall not be utilized as depositories for waste materials except as discussed in R.30-12(I and J);

(j) In all cases, dredging activities shall not be approved until satisfactory disposal sites have been acquired.

(k) Only hydraulic dredging is permitted unless the material is being placed in a hopper barge for offshore disposal or unless the applicant can show that hydraulic dredging is infeasible in a site-specific application.

(l) Marinas will usually not be allowed in areas that require maintenance dredging more often than once every four years.

H. Navigation Channels and Access Canals:

(1) Certain dredging activities involve the creation and maintenance of navigation channels and access canals. These activities have a potential for severe environmental impacts and should meet a demonstrated public need.

(2) Where the Department determines that such activities are justified, the following standards will be applied:

(a) Dredging for establishment of new canals which involves permanent alteration of wetland habitats will be prohibited unless no feasible alternative exists. Establishment of canals for purposes of creating waterfront lots from inland property will be prohibited unless it can be demonstrated that there will be no significant environmental impacts on critical areas;

(b) To the extent feasible, project plans must utilize piers or catwalks, rather than channels or canals, to reach deeper water areas;

(c) Access canals shall be designed to insure adequate flushing and shall not create dead-end or stagnant water pockets. Open-ended, U-shaped, or semicircular canals are generally preferred over dead-end canals, since they usually provide better water circulation;

(d) Highland waterway construction that is slated to be tied into wetland areas shall be constructed in the dry, if feasible, so that sloping and stabilization of the banks can be completed before the plug is removed for the connection to open waters. Where dry construction is not possible, temporary plugs or silt curtains at the end of canals connected to waterways should be maintained until all sediment settles out;

(e) The sides of navigation channels and access canals should be gently sloping rather than vertical to facilitate biological as well as physical stabilization of the canal banks;

(f) When several landowners are to be served by a project, dredging for navigation channels and access canals should be well planned to prevent unnecessary excavation. Tributary canals in the highlands leading to a central navigation channel should be utilized rather than separate channels for each waterfront landowner;

(g) The berm of access canals should be raised so that there is a gradual slope away from the canal edge. This will help prevent introduction of contaminants into adjacent wetland areas;

(h) Alignment of channels and canals should make maximum use of natural or existing channels. Alignment of channels and canals should avoid shellfish beds, nursery areas, and spawning areas in wetlands.

I. Deposition of Dredged Material:

(1) The deposition of dredged materials resulting from numerous dredging activities along the coast has serious environmental effects separate from the original dredging activity. Thousands of acres of productive wetland habitat have been destroyed by such deposition. Recognizing that additional disposal sites will be required, it is important that site acquisition proposals include plans for mitigating any adverse impacts upon the environment.

(2) The following standards are to be utilized:

(a) Upland disposal of dredged material shall always be sought in preference to disposal in wetlands. Vegetated wetlands and mudflats shall not be utilized for disposal of dredged materials unless there are no feasible alternatives. Any other wetlands should not be utilized for disposal of dredged materials when other alternatives exist;

(b) Open water and deep water disposal should be considered as an alternative if highland alternatives are not feasible. However, open and deep water disposal sites should be seriously considered only after careful consultation with the Department and other relevant State and Federal agencies;

(c) Dredged materials containing hazardous levels of toxic material must be disposed of with extraordinary caution. These materials shall never be disposed of in wetland areas and only in highland areas which are lined and diked with impervious materials. These materials will only be disposed in open water ocean dumping sites when maximum safety has been demonstrated after thorough review by the Department and other appropriate state and federal agencies;

(d) Dikes surrounding disposal areas should be shaped and vegetated immediately to minimize erosion, with outfalls positioned to empty into non-wetland areas;

(e) Future disposal sites shall be reviewed on a case-by-case basis;

(f) Wherever feasible, existing disposal areas shall be utilized to the fullest extent possible; this would include raising the height of the embankments to increase the holding capacity of the disposal area;

(g) Consideration must be given to the temporal aspects of spoil deposition - for example, impacts on spawning, fish migrations, shellfish harvesting, waterfowl nesting and wintering areas, and mosquito control. Attention must be given to possible adverse impacts of various alternative sites on the public health and welfare as well as on critical fish and wildlife areas;

(h) In all cases, dredging activities shall not be approved until satisfactory disposal sites have been acquired.

J. Waste Treatment Systems:

(1) The Department regulates the installation and operation of waste water treatment facilities, septic tanks, and landfills. Normal maintenance and repair of sewer facilities are exempted from the Department permit requirements by Section 48-39-130(D). The discharge of treated effluent is also exempted; provided, however, that the Department shall review and comment on these discharges. The Department is concerned primarily with wetland degradation problems which could involve commercially important shellfish, recreational fisheries, and critical wildlife habitats.

(2) Standards applicable to these installations are as follows:

(a) Applications for the construction of lagoons or impoundments for waste treatment facilities, solid waste disposal sites and similar activities in the critical areas shall be denied unless there are no feasible alternatives and it can be demonstrated that there will be no significant environmental impacts;

(b) Wherever feasible, construction and design of waste treatment facilities shall be accomplished in such a manner that no effluent will be discharged into areas where shellfish and other marine resources would be adversely affected.

Where waste treatment facilities would affect open, productive shellfish harvesting areas, the Department must consider the rights of the lessee, if applicable, or the public in the case of public oyster grounds, as well as impacts on shellfish resources;

(c) The siting of sewage treatment systems should avoid the critical areas. The location of structures other than actual pipelines, such as pump or lift stations, in critical areas will be prohibited unless no feasible alternatives exist;

(d) The construction of sewage treatment facilities and associated discharge pipes should be located and designed so as not to have adverse impacts upon areas of significant public use.

K. Marsh Impoundments for Recreational and Commercial Activities:

(1) Marsh impoundments totaling nearly 69,000 acres comprise a significant portion (approximately 16 percent) of our coastal wetlands. An additional acreage, perhaps equaling this figure, has been impounded in the past but consists today of tidally influenced areas where embankments are no longer maintained. Once important rice growing areas, the majority of these impoundments are managed primarily for recreational waterfowl hunting, wildlife sanctuaries, and other commercial, agricultural, and preservation uses.

(2) Proposals will be reviewed on a case-by-case basis according to the following standards:

(a) Permit applications to impound previously unimpounded wetlands or areas inundated by Outstanding Resource Waters shall be denied unless an overriding public interest is clearly demonstrated.

(b) The following factors will be considered in the review of permit applications for the impoundment of wetlands:

(i) Condition of existing dikes. Projects should require a minimum of new bank construction in wetlands.

(ii) Amount of wetlands proposed to be impounded.

(iii) The extent to which the project would block waters presently used for recreation or navigation by the public.

(iv) Degree of salinity of waters impacted by the proposed project.

(v) Quality of waters affected by the proposed project.

(vi) Primary purpose of the impoundment.

(c) All applications for the impoundment of wetlands must be accompanied by a detailed management plan setting forth the intent and method of managing the impounded areas. The management plan must be approved by the Department prior to permit issuance and shall become a condition of the permit. This plan must contain, but not necessarily be limited to, the following information:

(i) Applicant's objective(s) for the impoundment.

- (ii) Schedule of water level manipulations.
- (iii) Methods of pest and predator control (i.e., use of pesticides, prescribed burning, etc.).
- (iv) Water quality management plan.

L. Drainage Canals or Ditches:

(1) Drainage canals or ditches should follow the least damaging alignment and should meet one or more of the following needs:

- (a) insect or vector control as a public health necessity;
- (b) other public health purposes;
- (c) the control of runoff as part of a comprehensive flood plain management plan. Upland treatment of runoff is required if new drainage ways are permitted in critical areas.

(2) In addition to the application standards for dredging and filling and navigation channels and access canals, the following standards shall apply:

- (a) Drainage canals and ditches shall not create dead water or stagnant pockets;
- (b) To the extent feasible, the alignment of drainage canals should avoid the more productive wetlands;
- (c) To the extent feasible, alignments of canals shall make maximum use of existing deep water channels to avoid unnecessary excavation;
- (d) To the extent feasible, the quantity and quality of any discharged waters shall not result in extensive alteration of wetlands or the quality of coastal waters;
- (e) All dredged material must be disposed of in accordance with the regulations under R.30-12(I).

M. Nonwater-Dependent Structures:

(1) Nonwater-dependent structures, as defined in Section R.30-1(D), have been built in the past on pilings, moored or in other ways situated over coastal water and/or tideland critical areas. These structures are a serious threat to the values set forth in Section 48-39-20(E).

(2) Nonwater-dependent structures, including buildings, houses, or offices that float shall be prohibited from being constructed, moored, or otherwise placed in or over tidelands and coastal water critical areas unless there is no significant environmental impact, an overriding public need can be demonstrated, and no feasible alternatives exist.

(3) The Department shall at its discretion determine on a case-by-case basis whether or not a floating structure is a boat and thus exempt from the Act or in fact is a nonwater-dependent structure. This shall be based upon the primary function of the floating structure. The mere fact that a structure is registered as a vessel or capable of being propelled does not mean it is exempt from the Department regulations.

N. Access to Small Islands: Inappropriate development can affect the values set forth in Section 48-39-20(E) and the policies the Department is required to implement pursuant to Section 48-39-30. To prevent inappropriate access to small islands, permanent filling for access is prohibited, except for the expansion of existing useable causeways. Bridging will be considered based upon:

- (1) Distance of bridging required;
- (2) Type of bridging and dimensions of bridging requested;
- (3) Configuration of shoreline;
- (4) Size of the island including highland and critical area;
- (5) The existence of feasible alternative access;
- (6) Public need;
- (7) Impacts on protected resources;
- (8) The ability of the owner to tie into existing sewer utilities or meet SCDHEC standards for septic tanks;
- (9) Impact upon values set forth in Section 48-39-20(E);
- (10) The island is subject to stormwater and management policies set forth in the Program Document;
- (11) The owner must provide a dock master plan, and a development plan. Mitigation will be required for any fill placed in the critical area for widening causeways.

O. Mariculture:

(1) Mariculture means the confined cultivation of aquatic species in the marine environment, including the spawning and rearing of juveniles and adults, either alone or in combination with other species, and the trafficking in said species.

(2) Mariculture activity is increasing in the coastal waters of the State and it can be expected to grow considerably in the coming years. Overall mariculture activities have the potential to increase food supplies and provide employment and with proper management can be a compatible activity for the coastal critical areas. As with all activities in these sensitive areas, there need to be controls to insure that disruptions caused by such operations are minimized or eliminated and public trust issues are properly addressed.

(3) Specific standards which shall apply are as follows:

(a) No commercial mariculture operation will be allowed within 50' of an existing dock or block access to such dock unless conducted by the dock owner or with the dock owner's permission. If a dock is later permitted and constructed in a mariculture area, any affected mariculture operation must be moved to comply with this regulation.

(b) Each mariculture activity must file an operations plan as an addendum to its permit application. This plan must be complete and in the approved format before the application will be placed on public notice. Written confirmation of this by the Department is required. The applicant is advised this list is not all inclusive and other sections of SCDHEC, as well as other agencies, may have additional requirements. The plan must address:

(i) Description of proposed activities, including intended use of products, with maps showing actual coverage of critical area.

(ii) Potential environmental impacts and their mitigation.

(iii) Potential conflicts with existing co-users and their mitigation.

(iv) Navigational issues and plans for marking areas and identifying confinement structures.

(v) Steps taken to guarantee removal of mariculture structures in case of abandonment.

(vi) Storm damage plan.

(c) All structures, such as holding pens, shall be designed to be as unobtrusive visually as possible, with navigational markers meeting Coast Guard requirements, if any.

(d) All mariculture permits will be conditioned to require the permittee to agree to adopt Best Management Practices (BMP's). These BMP's must be updated as industry standards and technology changes.

(e) Private, non-commercial mariculture operations will be limited to no more than two hundred square feet of growing surface. These operations will be permitted only if the permittee owns the adjacent highland and is a riparian property owner.

(4) If a proposed mariculture activity complies with the standards stated in this regulation, a permit shall be issued unless the Department concludes that the activity is inconsistent with the basic state policies contained in Section 48-39-30, or that the activity is contrary to the public interest in that the proposed activity would unreasonably conflict with existing public uses; the proposed activity would unreasonably interfere with navigation; or the proposed activity would be otherwise inconsistent with the Coastal Zone Management Program.

P. Mooring Buoys:

(1) Mooring buoys provide moorage for vessels in open water areas. Mooring buoys, however, may cause navigational problems and hazards.

(2) Specific standards which shall apply to the placement of mooring buoys are as follows;

(a) Mooring buoys may be used to moor private or commercial vessels. Mooring buoys for private waterfront property owners shall be limited to one buoy per property, must be placed within extended property lines and placed on the same side of the channel as the property. No more than two vessels may be moored to the buoy at any time;

(b) With the exception of pumpout facilities, no commercial activity including, but not limited to, food services, T-shirt sales, concessions and boat maintenance services, may be allowed on or around moored vessels;

(c) There shall be no discharge of waste from vessels moored to buoys. Examples of such waste includes, but is not limited to, sewage, garbage and debris;

(d) Permits for private mooring buoys will only be issued to adjoining highground property owners. The mooring diameter (extent of vessel swing) does not allow the moored vessel to swing within 20 feet of extended property lines;

(e) The mooring buoy's anchor(s) must be of a type and or weight to prevent drag of the buoy and must be clearly indicated in the permit application;

(f) The mooring buoy shall be a minimum of 18 inches in diameter, be made of pliable material and have sufficient reflective material so it may be seen at night. The buoy shall have the owners name, address and permit number placed on the buoy with at least one inch letters and must be legible at all times;

(g) If the mooring buoy becomes an impedance or hazard to navigation, it must be removed or relocated by the permittee upon request by the Department. Failure to remove a mooring buoy shall result in permit revocation.

(3) The cumulative impact of private, single family mooring buoys may lead to navigational impedance and these concentrations may be considered a marina type facility. Therefore, developers and communities are encouraged to create and utilize limited mooring fields for the restricted use of the community property owners. These limited mooring fields should be in conjunction with a community docking structure and/or boat ramp for access.

30-13. Specific Project Standards for Beaches and the Beach/Dune System.

A. Normal Maintenance and Repair of Habitable Structures: Normal maintenance and repair of habitable structures is allowed without notice to the Department. See R.30-5(A)(10) and R.30-1(D)(33).

B. Construction of New Habitable Structures: If any part of a new habitable structure is constructed seaward of the setback line, the owner shall certify to the Department that construction meets the following requirements:

(1) The structure is located as far landward on the property as practicable.

(2) That portion(s) of the habitable structure seaward of the setback line is no larger than five thousand square feet of heated space.

(3) A drawing has been submitted to the Department showing a footprint of the structure on the property, a cross section of the structure, and the structure's relation to property lines and setback lines which affect the property.

(4) No erosion control structure or device is incorporated as an integral part of the habitable structure pursuant to Section 48-39-290.

(5) No part of the building is being constructed on the primary oceanfront sand dune or seaward of the baseline or on the active beach.

(6) When required, all mitigation meets the standards of the Mitigation Policy adopted as part of the State Beachfront Management Plan.

C. Additions to Habitable Structures: Additions located wholly or partially in the setback area are allowed provided the following requirements are met:

(1) The additions together with the existing structure do not exceed five thousand square feet of heated space seaward of the setback line.

(2) Additions to habitable structures comply with the conditions of new habitable structures as set forth in R.30-13(B).

(3) The additions must be located no farther seaward than the existing structure, i.e. must be landward or upward of the existing structure. The linear footage of the structure, parallel to the coast, cannot be increased.

(4) Additions constructed totally landward of the setback area do not require any notice to the Department.

D. Repair and Renovation of Habitable Structures: Repair and renovation of a habitable structure located wholly or partially in the setback area damaged but not destroyed beyond repair, due to natural or man-made causes is allowed after notice and written documentation to the Department.

E. Replacement or Rebuilding of Habitable Structures: A habitable structure located wholly or partially in the setback area which has been destroyed beyond repair due to natural causes may be replaced or rebuilt provided all of the following requirements are met:

(1) The total square footage of the replaced structure seaward of the setback line does not exceed the total square footage of the original structure seaward of the setback line.

(2) The linear footage of the replaced structure parallel to the coast does not exceed the original linear footage parallel to the coast.

(3) The replaced structure is no farther seaward than the original structure.

(4) Where possible, the replaced structure is moved landward of the setback line or if not possible, then as far landward as practicable, considering local zoning and parking regulations.

(5) The reconstruction is not seaward of the baseline unless permitted elsewhere in Section 48-39-250 through 48-39-360.

(6) Replacement of a habitable structure destroyed beyond repair due to man-made causes is allowed provided the rebuilt structure is no larger than the original structure it replaces and is constructed as far landward as possible, but the new structure must not be farther seaward than the original structure.

F. Landscaping, Earthmoving and Fill for Landscaping: Seaward of the setback line, the installation of materials and associated amenities, moving of earth and placing of fill to accomplish these installations are allowed provided all of the following requirements are met:

- (1) A comprehensive landscaping plan is submitted to and approved in writing by the Department.
- (2) The construction of a retaining wall which extends below existing grade will not be allowed;
- (3) No sand from the beach shall be used as backfill;
- (4) No native plant material growing on the frontal dunes may be disturbed unless it can be demonstrated that the condition of the dune will be improved;
- (5) Only native salt tolerant plant species may be planted on dunes and shall be approved by the Department staff;
- (6) Adequate measures shall be taken to contain fill and irrigation runoff;
- (7) Construction shall not alter or impact existing primary oceanfront sand dunes;
- (8) All work shall be in compliance with applicable local ordinances.

G. Fences, Lighting, Trash Receptacles, Sidewalks, and Signs. Seaward of the setback line the placement, maintenance and repair, and replacement of fences, lighting, trash receptacles, sidewalks, and signs are allowed provided all of the following requirements are met:

- (1) Construction shall not alter or impact existing sand dunes, dune vegetation, or the beach;
- (2) New sidewalks may not exceed six feet in width. New residential or private sidewalks must be constructed of wood. Existing concrete sidewalks attendant to public streets may be replaced within their original footprint;
- (3) Trash receptacles (not dumpsters) may be attached to access ways or placed on the beach when the local government determines there is a need for such receptacles;
- (4) Signs are limited to only those attached to attendant structures or mail receptacles or informational signs deemed necessary by federal, state, or local government for public health and safety. Advertisements are not allowed except on the walls or roofs of commercial structures;
- (5) No fence may be used as a retaining wall;
- (6) Any additional lighting seaward of the setback line shall be designed to shield the beach from illumination.

H. Emergency Vehicle Access Ways, Small Wooden Decks, Gazebos and Other Structures Which Enhance Beach Access. Seaward of the setback line the placement, maintenance and repair, and replacement of emergency vehicle access ways, decks, gazebos, and other structures which enhance beach access are allowed provided all of the following requirements are met:

- (1) Emergency vehicle access ways shall:

(a) Be constructed at sites which preclude alteration of existing sand dunes and dune vegetation to the maximum extent practicable;

(b) Be constructed above the existing grade except for points of entry and exit;

(c) Be constructed of wood or other approved material.

(d) Be located at least one-half mile from any other vehicle access to the beach unless, after review by the Department, this provision is determined to be unreasonable due to site specific circumstances concerning health and safety needs;

(e) Be approved by the local government with jurisdiction;

(f) Provide for pedestrian access use.

(2) Small wooden decks are allowed provided the following criteria are met;

(a) Be constructed of wood.

(b) Roofs will be allowed.

(c) Not exceed one hundred forty-four square feet inclusive of an associated walkway (this square footage is not included in the five thousand square-foot limitation on habitable structures);

(d) Be limited to no more than one of these structures per lot unless a limit of one would cause an unnecessary hardship as determined by the Department;

(e) These structures may not be constructed on the active beach or over primary oceanfront sand dunes, and if they ever become situated on the active beach they must be removed.

(f) These structures may be attached to the habitable structure provided they are not made an integral part of the habitable structure.

(g) These structures may not be enclosed or screened.

I. The Construction and/or Repair of Drives and Parking Lots. Within the setback area, the construction and/or repair of drives and parking lots is allowed provided all of the following requirements are met:

(1) On front row lots, new driveways and/or parking lots shall not extend seaward of habitable structures;

(2) Existing drives and/or parking lots may only be expanded on the landward side;

(3) No sand from the beach may be used during construction and/or repair;

(4) No alteration of the primary oceanfront sand dune or its dune vegetation is allowed;

(5) At the Department's discretion, a Stormwater Management Plan may be required;

(6) The work shall comply with applicable local ordinances;

(7) Best Management Practices (BMP's) such as hay bales, silt fences, mulches, or other appropriate measures shall be used as necessary during the construction phase to prevent sedimentation reaching adjacent waters and wetlands. Upon project completion the disturbed areas shall be stabilized as soon as possible with grass or other appropriate vegetative cover;

(8) No new driveway or parking lot may be constructed seaward of the baseline unless a special permit as provided in Section 48-39-290(D) is obtained.

J. Installation or Repair of Underground and Overhead Water, Sewer, Gas, Electrical, Telephone Lines and Cable Service Lines. Within the setback area the placement, maintenance, repair, and replacement of service lines are allowed provided the following requirements are met:

- (1) All service lines shall be located as far landward as possible on each individual lot;
- (2) Lines, junction boxes, poles, and accessory features will be relocated landward as far as possible in the event there is a need for replacement;
- (3) Dunes allowed to be altered during construction shall be reconfigured and revegetated to preconstruction conditions;
- (4) All work shall be in compliance with applicable local ordinances;
- (5) A comprehensive plan for new or replacement utilities shall be approved in writing by the Department.

K. Drainage Structures. Within the setback area the placement, maintenance and repair, and replacement of drainage structures are allowed provided the following requirements are met:

- (1) For new construction, the structures shall be part of the Department approved storm water management plan or drainage plan which must be submitted either prior to or at the time the permit application is submitted.
- (2) The replacement of drainage structures shall not involve an increase in the size of the existing structures, unless this change is approved by the Department as a part of the Stormwater Management Plan or drainage plan.
- (3) Any disturbance to the dunes and dune vegetation shall be restored to pre-project conditions as soon as possible, and the restoration shall be approved by the Department staff.
- (4) The drainage structure shall comply with the local drainage plan for the area seaward of the setback line.
- (5) New drainage structures may be placed on the beach only if:
 - (a) Existing structures are eliminated;
 - (b) No feasible alternative exists.
- (6) All work shall be in compliance with applicable local ordinances.

(7) Areas disturbed during construction shall be revegetated to the Department's satisfaction.

L. Sand Fences, Minor Beach Renourishment, Dune Revegetation. In an effort to provide beachfront property owners with passive, low-cost dune stabilization methods, the placement, maintenance and repair, and replacement of sand fencing, dune revegetation, and minor renourishment may be allowed seaward of the setback line under the following conditions (Note: These steps may not be viewed as being undertaken for erosion control but rather as dune enhancement and stabilization measures. Since a broad beach and a healthy dune provide a storm buffer, these methods should aid the natural processes affecting the beach/dune system.

(1) Sand fencing requirements:

(a) The fence material shall be biodegradable.

(b) The fences shall be installed according to plans established by the Department staff.

(c) The fences shall be installed in a manner so as not to impede turtle nesting. The Department may require sand fences be moved or removed entirely if the fences are found to impact turtle nesting activities or, in the Department's opinion, have the potential to impact turtle nesting activities.

(d) The fence shall be placed above the highest up rush of the waves as determined by the Department staff.

(e) The fencing shall not impede public access.

(f) The fence shall be installed with the understanding that this is a temporary measure.

(g) If fence material is damaged, debris shall be removed expeditiously from the beach area by the owner.

(h) If the Department determines that the fence has a detrimental impact to the beach/dune system, it shall be removed by the owner as directed by the Department.

(2) Revegetation requirements: Property owners are encouraged to plant vegetation as a means of stabilizing oceanfront dunes. The roots of plant material tend to bind sand to dunes, while plant foliage serves to trap wind blown sand. Suggested plant varieties include, but are not limited to, American beach grass (*Ammophila breviligulata*), bitter panicum (*Panicum amarum*), and sea oats (*Uniola paniculata*).

(a) Vegetation may be planted any time during the year and shall be planted, irrigated and fertilized according to nursery instructions or the Department's "How to Build a Dune" booklet.

(b) The Department staff shall inspect the site first and determine that there is a need for vegetative stabilization.

(3) Minor renourishment is allowed in an attempt to build and maintain healthy dunes. Minor renourishment requirements are:

(a) Sand shall be compatible in size and grain color, shall be from an upland source, and its use approved in writing by the Department staff.

- (b) Minor renourishment shall be performed between November 1 and May 15.
- (c) The Department staff shall inspect the site and establish that there is a need for the project.
- (d) All projects shall be in compliance with applicable local ordinances.

M. Returning Sand to the Beach/Dune System. Seaward of the setback line sand that has drifted out of this critical area may be returned to it if the following requirements are met:

- (1) A description of the proposed work shall be submitted to and approved in writing by the Department prior to any initiation of work;
- (2) Work is pursuant to R.30-13(L)(3).

N. Erosion Control.

(1) Jetties and offshore breakwaters interfere with the natural transport of sediment and therefore require special permits. They shall only be permitted after thorough analysis of the project demonstrates that there will be no negative effect on adjacent areas. The following standards shall apply:

- (a) A bond may be required to ensure that necessary remedial steps are taken to alleviate any adverse effects on adjacent areas caused by the installation of these structures. These remedial steps may include redesign and reconfiguration of the structures or even complete removal.
- (b) A monitoring plan to assess post-project impact on adjacent areas must be approved by the Department prior to the issuance of a permit.
- (c) Construction activities shall be scheduled so as not to interfere with nesting and brood-rearing activities of sea birds, sea turtles, or other wildlife species.
- (d) Where feasible, jetties shall be designed to provide public recreational fishing opportunities.
- (e) The applicant must have written approval from the local government which has jurisdiction in the area where the project is proposed.

(2) Protection of Beaches and Artificial Beach Nourishment: The following requirements apply to the Department's consideration of projects for the renourishment of beaches:

- (a) Careful study shall be given to the type (grain size and quality) of material most suitable for nourishment of a particular beach area;
- (b) Borrow areas and sand for artificial nourishment shall be carefully selected to minimize adverse effects. Where possible, artificial beach nourishment shall be performed in concert with inlet stabilization or navigation projects;
- (c) Dredging in the borrow areas shall not be in conflict with spawning seasons or migratory movements of significant estuarine or marine species. Nourishment of beach areas shall be scheduled so as not to interfere with nesting and brood-rearing activities of sea birds, sea turtles, or other wildlife species;

(d) All policies concerning dredging and filling cited at R.30-12(G) shall be applied to beach nourishment proposals;

(3) Erosion Control Structures or Devices

(a) No new erosion control structures or devices are allowed seaward of the setback line except to protect a public highway which existed as such on June 25, 1990.

(b) No erosion control structures or devices may be incorporated as an integral part of a habitable structure.

(c) Erosion control structures or devices must not be enlarged, strengthened, or rebuilt but may be maintained in their present condition if not destroyed more than the percentage allowed in Section 48-39-290(B)(2)(b)(i), (ii) and (iii). Repairs must be made with materials similar to those of the structure or device being repaired.

(d) Erosion control structures or devices determined to be destroyed more than the percentage allowed in Section 48-39-290(B)(2)(b)(i), (ii) and (iii) must be removed at the owner's expense. Nothing in this section requires the removal of an erosion control structure or device which existed on July 1, 1988, that protected a public highway.

(e) Erosion control structures or devices which existed on June 25, 1990, must not be repaired or replaced if destroyed:

(i) more than eighty percent above grade through June 30, 1995;

(ii) more than sixty-six and two-thirds percent above grade from July 1, 1995, through June 30, 2005.

(iii) more than fifty percent above grade after June 30, 2005. [See R.30-14(D)(3)(c) and (d) for damage assessment.]

O. Sand Dune Management.

(1) Walkways over dunes, as provided in Section 48-39-130(D), shall meet the following requirements:

(a) All components must be constructed of wood;

(b) Have a maximum width of six feet;

(c) Conform with the contour of the dunes with a 2 foot vertical clearance between the surface of the dune and top of the walkway;

(d) Displace no sand in a critical area;

(e) Be constructed with as little environmental damage as possible;

(f) Not be located within fifty feet of another walkway on the same parcel of property;

(g) Be limited to no more than one of these structures per lot unless a limit of one would cause an unnecessary hardship as determined by the Department.

(h) Be shore perpendicular, except as necessary for handicapped access.

(2) Projects to protect, restore, or build dunes shall conform to the following standards:

(a) The use of natural beach vegetation to trap wind blown sand is encouraged. Where pedestrian traffic has destroyed natural vegetation, the use of temporary sand fencing or its equivalent may be permitted.

(b) The construction of a dune by using beach sand and mechanical equipment shall be permitted only for restoration after unusual damage, such as that caused by a hurricane.

(c) Artificial dunes shall not be constructed seaward of the normal spring high-tide line.

(d) Any artificially constructed dunes shall be aligned to the greatest extent possible with existing dune ridges and shall be of the same general configuration as adjacent dunes.

P. Nonwater-dependent Structures. Nonwater-dependent structures, including but not limited to residences, restaurants, motel/hotel facilities, other commercial activities, and parking facilities, have been constructed in the past within the beach/dune system. The siting of new nonwater-dependent structures seaward of the baseline is prohibited unless a special permit is obtained pursuant to Section 48-39-290(D) and R.30-15(F) herein.

Q. Golf Courses.

(1) Golf Courses are allowed seaward of the baseline because they can adjust to a changing shoreline more readily than other types of land uses. Sandscraping or sandbagging is not allowed as protection for golf courses.

(2) Specific standards which shall apply are as follows:

(a) Leveling or damaging of dunes or dune fields is prohibited.

(b) Golf courses should be located as far landward as practicable to minimize encroachment into the setback area.

(c) Any lighting seaward of the setback line must be low intensity and adequately shielded to prevent impact on sea turtle nesting.

(d) Measures must be taken to protect the integrity of the primary oceanfront sand dune from foot traffic. These measures may include:

(i) courses designed in a manner that will minimize adverse effects on the sand dunes;

(ii) physical barriers such as sand fencing placed at the landward trough of the dune;

(iii) certain types of vegetation that would discourage pedestrian traffic, or;

(iv) any other measures the Department may deem necessary.

R. Fishing Piers:

(1) New fishing piers are allowed seaward of the baseline in order to provide public access to our coastal resources.

(2) Specific standards which shall apply to the construction of new piers or the alteration of existing piers are as follows:

(a) New piers must be dedicated to public use. A reasonable fee may be charged to the public but the general public may not be excluded from use.

(b) No restaurant, arcade or other nonwater-dependent structure shall be placed on the pier seaward of the baseline or over the active beach.

(c) The height of the pier stringers and spacing of the piles must be able to accommodate vehicular traffic associated with emergency operations and renourishment projects.

30-14. Administrative Procedures.

A. Procedures for Local Beach Management Plan Approval and Amendments [Section 48-39-350(A)].

(1) South Carolina local governments with jurisdiction fronting the Atlantic Ocean shall submit to the Department by no later than July 1, 1990, a local beach management plan after the local government has afforded the opportunity for adequate public review.

(2) Upon receipt of the local plan, the Department shall:

(a) Afford the public a thirty day comment period;

(b) Afford the opportunity for a public hearing on the local beachfront management plan;

(c) After considering all comments, approve, modify or remand the local beachfront management plan.

(3) The Department shall issue a public notice of the approval of any local beach management plan or amendment thereto. The implementation date of the local beach management plan or amendment thereto will be specified in such public notice.

B. Procedures for State Implementation of Local Responsibilities [Section 48-39-350(B)].

(1) If a local government fails to develop and implement a local beach management plan as required by Section 48-39-350, the Department shall implement the local government's responsibilities by:

(a) Issuing public notice that the Department has found that the local government has failed to develop and implement a local beach management plan as required;

(b) Carrying out the tasks enumerated in Section 48-39-350(A)(1-10);

(c) Providing a thirty day public comment period for public review of the Department's proposed local beach management plan;

(d) Affording the opportunity for a public hearing;

(e) After reviewing all public comments, modify and/or adopt and implement the local plan.

(2) The Department may delegate responsibility for the implementation of the Department sponsored and approved local beach management plan to the local government, but the Department shall have the right to assume responsibility for administering and enforcing the plan if the local government fails to do so.

C. Procedures for State/Local Coordination During and in Response to Emergency Situations (Section 48-39-320 & 350). The issuance of the Department emergency order automatically supersedes any local emergency order for the same emergency situation.

D. Procedures for Determining Destroyed Beyond Repair (Section 48-39-290(B)).

(1) The Department shall be required to make a determination as to whether or not a structure is destroyed beyond repair under Section 48-39-290 in any of the following cases:

(a) Upon the written request of an owner of the structure or local government official;

(b) Upon its own election;

(c) As part of a damage assessment effort conducted solely by the Department or in cooperation with a local government in response to an emergency situation.

(2) The Department shall provide a copy of its determination of whether a structure is destroyed beyond repair to the property owner and the local government with jurisdiction over such structure.

(3) The Department shall employ the following procedures in determining whether a structure is destroyed beyond repair: See also R.30-14(D)(4) and (5).

(a) Habitable Structure:

(i) Following a natural disaster, the Department shall coordinate a post-storm damage appraisal with the affected unit of local governments. Pursuant to Section 48-39-270(11) the Department staff shall make the initial damage appraisal. When appropriate, the Department may use the property owner's insurance adjustor's figures to determine the damage.

(ii) If an owner disagrees with the appraisal of the Department, he may obtain a second appraisal to evaluate the damage to the building. An owner who disagrees with the appraisal of the Department must notify the Department in writing, within 90 days of receipt of the Department's determination that he intends to obtain an appraisal. If the two appraisals differ, then the two appraisers must select a third appraiser. If the two appraisers are unable to select a third appraiser, the Clerk of Court of the county in which the structure lies must make the selection. All third appraisers must be registered, professional engineers, registered architects or licensed adjustors. All third appraisers must not have been involved in either the insurance

adjustment of the property or the first or second appraisal and the cost of the third appraisal will be divided equally between the Department and the property owner. In no event may the property owner begin rebuilding or repairing (other than emergency repairs) a structure until the appraisal process described herein has been completed. Nothing in this section prevents a court of competent jurisdiction from reviewing, de novo, the appraisal upon the petition of the property owner.

(b) Pools:

(i) Following a natural disaster, the Department shall coordinate a post-storm damage assessment with the affected unit of local government. Pursuant to Section 48-39-270(11) the Department shall make the initial assessment.

(ii) If an owner disagrees with the appraisal of the Department, he may obtain an appraisal to evaluate the damage to the pool. An owner who disagrees with the appraisal of the Department must notify the Department in writing, within 90 days of receipt of the Department's determination, that the owner intends to obtain an appraisal. If the two appraisals differ, then the two appraisers must select a third appraiser. If the two appraisers are unable to select a third appraiser, the Clerk of Court of the county where the pool lies must make the selection. All third appraisers must be registered, professional engineers and the cost of the third appraisal will be equally divided between the Department and the property owner. In no event may the property owner begin rebuilding or repairing a pool (other than emergency repairs) until the appraisal process described herein has been completed. Nothing in this section prevents a court of competent jurisdiction from reviewing, de novo, the appraisal upon the petition of the property owner.

(c) Seawalls and Bulkheads: In determining whether a seawall or bulkhead as defined in Section 48-39-270(1)(a) and (b) is destroyed more than eighty percent above grade through June 30, 1995, more than sixty-six and two thirds percent above grade from July 1, 1995, through June 30, 2005, and more than fifty percent above grade after June 30, 2005, the damage assessment shall be accomplished as follows:

(i) Damage to seawalls and bulkheads will be judged on the percent of the structure remaining intact at the time of damage assessment. The portion of the structure or device above grade parallel to the shoreline must be evaluated. The length of the structure or device parallel to the shoreline still intact must be compared to the length of the structure or device parallel to the shoreline which has been destroyed. The length of the structure or device parallel to the shoreline determined to be destroyed divided by the total length of the original structure or device parallel to the shoreline yields the percent destroyed. Those portions of the structure or device standing, cracked or broken piles, whalers, and panels must be assessed on an individual basis to ascertain if these components are repairable or if replacement is required.

(ii) If the property owner disagrees with the assessment of a registered professional engineer acting on behalf of the Department, he may obtain an assessment by a registered professional engineer to evaluate, in the same manner set forth herein, the damage to the structure or device. An owner who disagrees with the assessment of the Department must notify the Department in writing, within 90 days of receipt of the Department's determination, that he intends to obtain an independent assessment. If the two assessments differ, then the two engineers who performed the

assessment must select a registered professional engineer to perform the third assessment. If the first two engineers are unable to select an engineer to perform the third assessment, the Clerk of Court of the county where the structure or device lies must make the selection of a registered professional engineer. The cost of the third engineer will be equally divided between the Department and the property owner. The determination of the percentage of damage by the third engineer is conclusive. In no event may the property owner begin rebuilding or repairing a seawall or bulkhead until the appraisal process described herein has been completed. The determination of the degree of destruction must be made on a lot by lot basis by reference to county tax maps.

(d) Revetments: Revetments must be judged on the extent of displacement of the stone, the effort to return these stones to the pre-storm event configuration of the structure or device, and the ability of the revetment to retain backfill material at the time of the damage assessment. If the property owner disagrees with the assessment of a registered professional engineer acting on behalf of the Department, he may obtain an assessment by a different registered professional engineer to evaluate, as set forth in this item, the damage to the structure or device. An owner who disagrees with the appraisal of the Department must notify the Department in writing, within 90 days of receipt of the Department's determination, that the owner intends to obtain an appraisal. If the two assessments differ, then the two engineers who performed the assessment must select a registered professional engineer to perform the third assessment. If the first two engineers are unable to select an engineer to perform the third assessment, the Clerk of Court of the county where the structure or device lies must make the selection of a registered professional engineer. The cost of the third engineer will be equally divided between the Department and the property owner. The determination of the percentage of damage by the third engineer is conclusive. In no event may the property owner begin rebuilding or repairing a structure until the appraisal process described herein has been completed. The determination of the degree of destruction must be made on a lot by lot basis by reference to county tax maps.

(4) Inventory: The following steps will be taken by the Department in order to insure accurate and expeditious damage appraisals can be conducted when necessary.

(a) Structures which are affected by the setback line will be identified. If the line touches any part of the structure or an attached deck, the structure is considered affected by the destroyed beyond repair provisions of the Act and additional information must be collected. By community (city, county) a list (addresses and tax map numbers) of each structure that touches the baseline and setback line will be prepared.

(b) Staff will prepare an inventory file for all structures subject to the Department regulation within their assigned community. The file will contain information relative to the location, ownership, persons to contact, and assessed value of the property, and a recent photograph of the front and rear sides of the structure. The completion of this task should include an inventory of swimming pools and erosion control devices where possible. An inventory of vertical erosion control devices should include a measurement of the parallel length of the structure and the elevation of the top of the structure. An inventory of a revetment will require that the seaward slope of the structure be determined by pulling a tape from the highest crest stone to the top of a representative toe stone. This is to be referred to as a revetment transect. Revetment transects are to begin at the northern property line and are to be repeated every 20 feet across the revetment to the southern property line. The frequency of these transects may be intensified to every 10 feet to

encompass high or low extremes in the rock elevations. A schematic drawing shall depict the revetment by its transects. Beside each transect shall appear the letters (A) for adequate stone amounts, (D) for deficient stone amounts, and (S) for surplus stone amounts. Combinations of these letters on one transect will be separated by a short line that will distinguish one depiction from the other along the transect. The elevation of the top of the revetment must also be included.

(c) For habitable structures, the base value of each affected structure will be determined by consulting the tax appraisal records for each county. The values used by the Department will only be the assessed value for the structures on the lot and will not contain any land values. The Damage Assessment Coordinator will maintain a master list of all impacted structures.

(d) The staff person assigned the assessment responsibility for a particular beach community will periodically review the assessment sheets and coordinate with local communities. Assessments will be updated annually or as staff reassignments are made.

(e) Immediately after a damage incurring situation, the staff person will take the damage assessment file, preliminary damage evaluation forms for one and two story structures, and a camera and make a site visit to each property in their assigned area. The properties will be photographed and a preliminary evaluation completed for each property. This evaluation will be used to separate the properties into three categories: minor damage, possible destroyed beyond repair, and completely destroyed. At this time the person doing the assessment will try and locate any houses missing from foundations, and note any problems with the assessment process. Structures that are identified as having minor damage will be counted, the addresses and tax map numbers verified and a list compiled to be given to the Department offices and the local building official so that authorizations to make repairs can be issued promptly.

(f) The structures that are identified as possibly destroyed beyond repair will be listed, addresses verified and duplicate copies of the assessment sheets sent to the Department offices.

(5) Damage Assessment:

(a) Habitable Structures and Pools:

(i) The Damage Assessment Coordinator will assign properties determined from the preliminary survey to be possibly destroyed beyond repair to an insurance adjuster, or in the case of pools an engineer, who is under contract to the Department. The adjuster/engineer will make arrangements with the owner of the property to visit the site and prepare an estimate of the cost of repairing the structure to its previously existing condition. In the case of pools, the damage estimate will be determined by the sum of the following costs:

(1) The area of damaged walls and floor, multiplied by the unit replacement costs for the walls and floor;

(2) Demolition and removal costs;

(3) Site preparation costs.

This estimate will be based on the amount of damage to various components of the structure, and the unit cost of repairing each component as supplied by a nationally recognized estimating firm.

(ii) The Damage Assessment Coordinator will compare the repair estimates with the base value figures. In the case of habitable structures, the base value is obtained from the tax assessor or other sources deemed credible by the Department. The base value for a pool can be obtained from any of the following sources: 1) Bills and invoices submitted to the pool owner at the time of pool installation; 2) tax assessment figures; 3) estimate based on the size of the pool and the unit cost of pool construction as supplied by a nationally recognized estimating firm; 4) any other information that is determined to be reliable by the Damage Assessment Coordinator. If the repair cost is greater than 66 2/3% of the base value, the structure will be determined to be destroyed beyond repair (DBR).

(iii) A list of those structures that are repairable and those that are DBR will be maintained and distributed daily to the Department field offices. Authorization to repair buildings not DBR can be made as soon as the assessment process is completed. The owners of properties listed as DBR will be notified by letter by the Permitting Staff. All records and files pertaining to the buildings listed as DBR will be turned over to the Department's legal staff as soon as the process is completed. There will be no reassessments by the Department unless there is intervening damage.

(b) Erosion Control Devices

(i) **Vertical walls:** The following percentages will be used when conducting the destroyed beyond repair assessments for vertical walls: 1) pilings - 20%, 2) whalers - 20%, 3) panels - 60%. On walls with no whalers incorporated into the design, the percentage is to be 25% for the pilings and 75% for the panels. A vertical wall will be considered functional if it is no more than 2 feet out of alignment or 30 degrees, whichever is less. For concrete walls which have only one component, the intact portion above grade, parallel to the shoreline will be compared to the original shore parallel portion of the wall to determine if the structure is damaged beyond repair.

(ii) **Revetments:** To determine if a revetment is destroyed beyond repair, revetment transects must be conducted as described in the inventory section, R.30-14(D)(4). The post-damage transects will be compared to the original revetment configuration. If the revetment has slumped or stone been lost to the extent that the percentage of damaged revetment exceeds the percentages allowed in R.30-13(N)(3)(e), the structure is destroyed beyond repair.

(iii) Those structures which are a combination of vertical wall fronted by rock revetment will be assessed using both the method for evaluating walls and the method for evaluating revetments. The percent of the wall which is destroyed will be determined then multiplied by 50%. Likewise, the percentage of the revetment which is destroyed will be determined and then multiplied by 50%. The sum of the two damaged percentages is the percent of the complete structure which is destroyed beyond repair.

(iv) The determination of the percent of damage to an erosion control structure must be made on a lot by lot basis as referenced by county tax maps which existed on May 23, 1993.

(v) Effective date of damage appraisals: All appraisals are effective for 90 days from the date all concerned parties agree on the appraisal, unless otherwise determined by the

Department. If the structure sustains additional damage prior to the 90 day time limit, the Department may require a new assessment. If no work has begun during that 90 days, a new damage appraisal may be required before the Department will issue another permit or release letter.

E. Procedures for Adopting Baselines and Erosion Rates (Section 48-39-280).

(1) Following the establishment of the interim baselines, erosion rates, and setback lines pursuant to Section 48-39-280(C) and any amendments or revisions thereto, the Department will adopt final baselines, erosion rates, and setback lines as part of the state comprehensive beach management plan pursuant to Section 48-39-320. The following procedure will be used for the establishment of final baselines, erosion rates, and setback lines:

(a) The proposed baseline, erosion rate, and setback line for a region, island or part thereof, or other geographic area of South Carolina's ocean shoreline shall be made available to the public for inspection at each of the Department's offices;

(b) the Department shall afford the public a thirty-day comment period;

(c) the Department shall afford the opportunity for a public hearing.

(2) The Department shall, following the consideration of all public comments, adopt in final form the baselines, erosion rates, and setback lines and shall include such information in the state plan.

F. Procedures for Appealing Baselines and Erosion Rates [Section 48-39-280(E)].

(1) Any landowner claiming ownership of affected property who feels that the final or revised setback line, baseline, or erosion rate as adopted is in error, upon submittal of substantiating evidence, within one year of the revision date, must be granted a review of the setback line, baseline, or erosion rate, or a review of all three. The Department shall hear all requests for review. The process is as follows:

(a) Upon receipt of a property owner's request for review of the setback, baseline, or erosion rate, a request will be made of the property owner to provide the Department with substantiating evidence, as required in Section 48-39-280(E). If the property owner does not respond or if there is no evidence at all to support the request, a letter will be sent to the property owner denying the request.

(b) If the Department agrees with the property owner that the lines are in error, the lines will be moved.

(c) If the Department disagrees with the property owner, and believes that the location of the lines is correct, the property owner will be notified in writing. Any appeal of the Department's decision under this section shall be made to the Administrative Law Judge Division.

(2) Appeals are governed by R.30-6.

(3) The decision of the Coastal Zone Management Appellate Panel is the final Agency decision, and is appealable to circuit court.

G. Procedure for Movement of Baseline After Renourishment.

- (1) The Department must receive a petition from the local government; or the landowners with notice to the local government, before the baseline can be moved pursuant to Section 48-39-280(A)(4). The petition cannot be submitted until the permitted beach nourishment project, which must have a minimum five-year design life, has been completed. The local government must certify to the Department that the proposal to move the baseline is consistent with the objectives and policies of its local comprehensive beachfront management plan.
- (2) Petitioner must demonstrate an ongoing commitment to fund a future renourishment project with the same or greater design life than the original project using an acceptable funding option.
- (3) The Petitioner must prove that it possesses or has obtained all necessary legal authority to perform the nourishment project in the future, excluding environmental regulatory permits.
- (4) Petitioner must submit survey data in the following format to demonstrate the beach has been stabilized by the nourishment project:

 - (a) A minimum of three sets of survey data from the stations (monuments) designated in the project permit must be submitted. This will include all stations within the construction limits (maximum allowable profile spacing is 1,000 feet) and stations within 2,000 feet of each end of the project. These surveys will be taken at three month intervals, beginning at the time of project construction completion.
 - (b) Semi-annual surveys of the project beach during years two and three after project construction must be performed and submitted to the Department to document beach stability.
- (5) The Department will evaluate the survey data to determine beach stability. Stability is defined in (10) below. If the beach has not stabilized in the first six months following construction, additional subsequent surveys will be evaluated to determine stability.
- (6) The project must be constructed according to the permit design at an elevation which will maintain a dry sand beach. The maintenance of the dry sand beach will be evaluated in the same manner as stability, using the survey data.
- (7) The Petitioner must show an ongoing financial commitment to renourishment which will stabilize and maintain the dry sand beach at all stages of the tide for the foreseeable future. The Department defines foreseeable future as at least ten years from the date the original project achieved stability.
- (8) The Department will move the baseline when all of the above criteria have been met. The new baseline will be located on the landward edge of the existing erosion control device or at a position determined by the Department using the method described in Section 48-39-280(A)(1).
- (9) No new construction may occur in the area between the former baseline and the new baseline for three years after the initial beach nourishment project has been completed, unless allowed by special permit. The project is "completed" when it has stabilized in the manner described in (10) below. Reconstruction of habitable structures and pools is not considered new construction for purposes of this section. Additions are considered new construction.

(10) The following definition will be used by the Department to define "stability": A renourished beach is stabilized when field observations and quarterly surveys of the project beach, conducted for a minimum of six months following construction completion, demonstrate only normal long-term erosion patterns and losses are affecting the nourished beach. The Department may consider any or all of the following in determining stability: profile characteristics and changes (volumetric and contour changes) and sediment analyses.

H. Damage Assessment. Notwithstanding Sections R.30-14(A)-(G), Section 8 of 1990 Amendments to the 1977 Coastal Zone Management Act, states as follows. Except as otherwise specifically provided in this act, the provisions of this act shall be applied only prospectively and shall not affect any legal action commenced or any cause of action accruing as a result of an event or events which occurred before the effective date of this act. Any such action must be governed by the provisions of Sections 48-39-10 through 48-39-360, as amended by Act 634 of 1988, and in existence before the effective date of this Act.

(1) Assessment of damage to seawalls and bulkheads that occurred between July 1, 1988, and July 1, 1990, will be judged by the following criteria which shall be used to determine the percentage of damage to the erosion control device:

(a) Seventy-five percent (75%) multiplied by the length of structure remaining plus twenty-five percent (25%) multiplied by the amount of backfill remaining equals the percentage of structure not destroyed.

(2) The following portions of the structure shall not be included:

(a) Wingwalls;

(b) Deadmen;

(c) Tiebacks.

(3) Assessment of damage to swimming pools that occurred between July 1, 1988, and July 1, 1990, will be judged by the following criteria. Swimming pools shall be considered destroyed beyond repair if either of the following exists:

(a) Undermining of the pool support which causes severe cracks in the pool walls and floors.

(i) Severe cracks shall be those which produce a loss of structural integrity causing a portion of a structural element (i.e. wall or floor) of the pool to be replaced rather than repaired.

(ii) Greater than ten percent (10%) of any one structural element (i.e. wall or floor) shall render the pool destroyed beyond repair.

(iii) If the addition of an insert is required to make the pool functional, then the crack shall be considered severe and the pool shall be declared destroyed beyond repair.

(iv) If a pool has been assessed and repair procedures require the removal of ten percent (10%) of any one structural element, then the pool shall be declared destroyed beyond repair at the time of the removal of the element.

(b) Hydrostatic pressure beneath the pool which causes the pool to be lifted up more than six inches. Hydrostatic pressure beneath the side of the pool produces severe cracks as delineated in (a)(iv) above shall mean that the pool is destroyed beyond repair.

I. Procedure for Removal of Structures Located on the Active Beach: The Department shall employ the following procedures for determining when a structure located on the active beach must be removed: (Note: This section only applies to those structures approved by the Department via special permit.)

(1) If a major storm event or chronic, long-term beach erosion causes a structure to become located on the active beach, as defined in R. 30-1(D)(2), the Department will monitor the beach fronting the structure for a minimum of one year.

(2) Monitoring of the beach will include the collection and analysis of beach profile data, and visual inspections.

(3) The Department will consider all available information including pending renourishment projects, long-term erosion/accretion trends for the area, and shoal attachment cycles prior to determining whether a structure will be permanently located on the active beach.

(4) Upon determining that a structure is permanently located on the active beach, the Department will notify the property owner and require that the structure be removed or relocated landward by the owner.

30-15. Activities Allowed Seaward of Baseline.

A. Wooden Walkways: Wooden walkways no larger in width than six feet are the only structures allowed seaward of the baseline that do not require a SCDHEC-OCRM permit. See R.30-13(O)(1).

B. Small Wooden Decks: Wooden decks seaward of the baseline require a SCDHEC-OCRM permit. These decks should be no larger than one hundred and forty-four square feet. See R.30-13(H)(2).

C. Fishing Piers:

(1) New fishing piers require a SCDHEC-OCRM permit and must be open to the public. See R.30-13(R).

(2) Those fishing piers with their associated structures including, but not limited to, bait shops, restrooms, restaurants, and arcades which existed September 21, 1989, may be rebuilt if they are constructed to the same dimensions and utilized for the same purposes and remain open to the public. In addition, those fishing piers with their associated structures which existed on September 21, 1989, that were privately owned, privately maintained, and not open to the public on this date may be rebuilt and used for the same purposes if they are constructed to the same dimensions. A SCDHEC-OCRM permit is required.

D. Golf Courses: Golf Courses require a SCDHEC-OCRM permit pursuant to the criteria set forth in R.30-13(Q).

E. Normal Landscaping: Normal landscaping requires a SCDHEC-OCRM permit pursuant to the criteria set forth in R.30-13(F).

F. Special Permits: The Department shall consider applications for special permits. Special permits are to be issued only in situations where without such a permit, the property owner would have no reasonable use of his property, or when an overriding public benefit can be demonstrated. When issuing special permits, the Department shall consider the legislative findings and policies as set forth in Sections 48-39-30, 48-39-250 and 48-39-260. Specifically, the following criteria shall serve as guidelines when issuing special permits:

(1) A structure cannot be constructed or reconstructed on a primary oceanfront dune or on the active beach, and in the event that the beach erodes so that in the future the permitted habitable structure is located on the active beach, the property owner agrees to remove the structure at his own expense.

(2) There shall be no adverse impact on the stated policies of the Beachfront Management Act, including the policies protecting the sand dunes and preservation of the dry sand beach.

(3) The granting of a special permit shall not create a situation contrary to the public health, safety or welfare.

(4) In determining whether or not a permit is contrary to the public health, safety or welfare, the Department shall consider a) the erosion rate at the site, b) how soon the structure will be located on the active beach, c) whether or not the proposed structure meets American National Standards Institute building standards, and/or d) the potential cumulative effect that similar structures will have upon the beach/dune system.

(5) Necessary components of habitable structures, such as sewer lines, septic tanks and utilities, do not require separate special permits. However, decking, patios, driveways, etc., are not considered as necessary components of habitable structures and therefore these items must be shown on the permit application.

(6) Generally, the Department considers special permits only under extraordinary circumstances. Three specific areas, however, where the Department deems that special permits are more appropriate include:

(a) **Habitable Structures Seaward of the Baseline:** The Department may grant a special permit to construct a single-family house seaward of the baseline where such permit meets the conditions of R.30-15(F)(1)-(6) and;

(i) The house is no larger than similar structures in the general neighborhood and in no case may it be larger than 5000 square feet;

(ii) The house is no further seaward than the houses on either side unless this would preclude a house from being constructed on the lot;

(iii) The permittee agrees to remove the home when it comes on to the active beach;

(iv) The permittee agrees to such other conditions as the Department deems are appropriate to promote the policies of the Act.

(b) Pools: No new pools shall be constructed seaward of the baseline. Pools may be reconstructed, upon obtaining an OCRM permit, if they are landward of an existing functional erosion control structure or device. The Department may grant a special permit to reconstruct a pool seaward of a habitable structure where such permit meets the conditions of R.30-15(F)(1)-(6) and;

(i) There is no other location on the property suitable for construction of a pool;

(ii) The commercial viability of the project is directly related to the presence of the proposed pool;

(iii) The pool is not constructed upon the active beach and the owner agrees to remove same when it comes onto the active beach;

(iv) The project is constructed so that there are no erosion control devices built as part of the pool structure and the design meets approval of the Department;

(v) The pool is no larger than is deemed necessary by the Department;

(vi) The permittee agrees to conditions as the Department deems appropriate to promote the policies of the Act.

(c) Parking Lots and Drainage Devices: The Department may grant special permits for commercial properties for reconstruction of parking lots and drainage devices seaward of the baseline which are absolutely necessary for the economic viability of the project where such permit meets the conditions of R.30-15(F)(1)-(6) and;

(i) Special permits for parking lots can only be issued for reconstruction of parking lots no larger than existed prior to destruction;

(ii) The Department can dictate the configuration of the parking lot and drainage devices and the materials used for their construction;

(iii) Construction of parking lots and drainage devices cannot take place on active beach and must be removed once they become located on the active beach;

(iv) The Department can place such conditions upon construction of the parking lots and drainage devices so as to meet the purposes of the Act.

G. Groins. Existing groins may be reconstructed, repaired, and maintained. New groins may only be allowed on beaches that have high erosion rates with erosion threatening existing development or public parks. In addition to these requirements, new groins may be constructed and existing groins may be reconstructed only in furtherance of an on-going beach renourishment effort which meets the criteria set forth in R.30-14(G), and in accordance with the following:

(a) The applicant shall institute a monitoring program for the life of the project to measure beach profiles along the groin area and adjacent and downdrift beach areas sufficient to determine erosion/accretion rates. For the first five years of the project, the monitoring program must include, but is not necessarily limited to

- (i) establishment of new monuments;
- (ii) determination of the annual volume and transport of sand; and
- (iii) annual aerial photographs.

Subsequent monitoring requirements must be based on results from the first five-year report.

(c) Groins may only be permitted after thorough analysis demonstrates that the groin will not cause a detrimental effect on adjacent or downdrift areas. The applicant shall provide a financially binding commitment, such as a performance bond or letter of credit that is reasonably estimated to cover the cost of reconstructing or removing the groin and/or restoring the affected beach through renourishment pursuant to subsection (c).

(d) If the monitoring program established pursuant to subsection (a) shows an increased erosion rate along adjacent or downdrift beaches that is attributable to a groin, the department must require either that the groin be reconfigured so that the erosion rate on the affected beach does not exceed the preconstruction rate, that the groin be removed, and/or that the beach adversely affected by the groin be restored through renourishment.

(d) Adjacent and downdrift communities and municipalities must be notified by the department of all applications for a groin project.

(e) An adjacent or downdrift property owner that claims a groin has caused or is causing an adverse impact shall notify the department of such impact. The department shall render an initial determination within sixty (60) days of such notification. Final agency action shall be rendered within twelve months of notification. An aggrieved party may appeal the decision pursuant to the Administrative Procedures Act.

(f) In an area in which new groins have been permitted, access along the beach from one groin compartment to another must be maintained or improved. If access is impacted or eliminated, temporary access around or over the groin must be established immediately. Within thirty days of notification from the Department, a plan to provide permanent access around or over the groin must be submitted by the entity responsible for the groin construction. This permanent access plan must be implemented within ninety days of the Department approval.

(g) The applicant must have written approval from the local government which has jurisdiction in the area where the project is proposed.

H. Emergency Orders: Emergency situations before or after a storm event may prompt local governments to issue Emergency Orders (R.30-5) allowing property owners to construct temporary barriers against wave uprush. A structure is determined to be in imminent danger when the erosion comes within ten feet of a structure. In an effort to protect Loggerhead turtle nesting sites, Emergency Orders issued between April 15th and November 1st must be reviewed by the Department prior to actual performance of renourishment. Unless otherwise approved by the Department, emergency sandbagging, scraping and renourishment shall be performed using the following criteria:

(1) Sandbags may be used to construct temporary protection for coastal structures if the local official determines a structure to be in imminent danger. The following criteria will be used by the local governments when issuing Emergency Orders.

(a) The bags shall be biodegradable and be commercially manufactured for the purpose of holding sand.

(b) The bags, when filled, shall be a maximum size of 5 (five) gallons or 0.66 cubic feet and must be filled and installed by hand.

(c) The bags may be placed no farther seaward than is necessary to protect the structure or to repair an erosion control structure. In no case may sandbags protect a dune or be used to retard normal shoreline movement.

(d) The bags shall be stacked at an angle not steeper than 45 degrees.

(e) Only clean sand may be placed in the bags. Beach sand may be used to fill the bags provided the sand is returned to the beach when the bags are removed.

(f) The property owner is responsible for the day to day maintenance of the sandbags to insure that they remain in place and in good repair. The property owner is responsible for the complete removal of the bags when so ordered by the Department.

(g) A copy of the issued Emergency Order shall be in the possession of anyone performing sandbagging.

(2) Sandscraping may be used to construct temporary protection for coastal structures if the local official determines a structure to be in imminent danger. The following criteria will be used by the local governments when issuing Emergency Orders;

(a) Sandscraping may only be ordered and performed to protect existing structures. Sandscraping may not be allowed in front of erosion control structures unless it can be proven that the erosion control structure is itself in danger of collapsing and is within 10 feet of the habitable structure.

(b) Sand may only be scraped from the intertidal beach and only between extended property lines of the structure receiving the sand. The depth of scraping may not exceed one foot below the existing beach level.

(c) Sand may be placed against an eroded scarp or to replace an eroded dune that is seaward of a threatened structure. The dune shall not exceed six (6) feet above grade or twenty (20) feet in width as measured from dune toe to dune toe.

(d) No sand may be placed landward of an existing, functional erosion control device.

(e) Sandscraping may be performed one time only per property for each Emergency Order issued by the local official without prior approval by the Department.

(f) A copy of the issued Emergency Order shall be in the possession of anyone performing sandscraping.

(3) Renourishment may be used to construct temporary protection for coastal structures if the local official determines a structure to be in imminent danger. The following criteria will be used by the local governments when issuing Emergency Orders;

(a) Renourishment sand must originate from an upland source and be approved by Department staff as beach compatible.

(b) Sand placed on the beach must be located between the extended property lines of the property receiving the sand.

(c) Sand may be stabilized with sand fencing and beach vegetation pursuant to the permitting requirements in Section 30-17.

(d) A copy of the issued Emergency Order shall be in the possession of anyone performing emergency renourishment.

30-16. Documentation Requirements Before Commencing Activities Between Setback Line and Baseline.

A. Notification Procedure:

(1) Activities requiring written notification to and written response from the Department:

(a) Construction of new habitable structures at least partially seaward of the forty year setback line.

(b) Additions to habitable structures.

(c) Replacement of habitable structures.

(d) Construction of new pools between the baseline and the setback line and landward of an erosion control device which existed June 25, 1990.

(e) Replacement of pools.

(2) Information required:

(a) New habitable structures and additions to habitable structures:

(i) heated square footage of the proposed habitable structure or proposed addition.

(ii) plat showing footprint and cross section showing foundation of new structure as located on lot. Also, all property lines, setback lines and any parking requirements which may be in effect must be shown. The structure or addition must be located as far landward on the property as practicable as determined by the Department.

(iii) for additions, the plat must clearly differentiate between the original structure and proposed additions.

(b) Replacement structures:

(i) heated square footage of original and proposed replacement structure.

(ii) linear footage along the coast of proposed replacement and original structure.

(iii) plat showing footprint and cross section showing foundation of proposed replacement structure.

(c) Replacement of destroyed pools will require a plat showing footprint and cross section of the original and replacement pool.

30-17. Application Procedures for General Permits Pursuant to Section 48-39-290(B)(4).

A: General Guidelines: Applicants for general permits shall be required to submit the following information:

(1) Completed SCDHEC-OCRM general permit application form.

(2) Proof that the adjacent property owners and the local governmental body having jurisdiction over the site have been notified of the proposed activity by certified mail through the use of the following notification:

(Applicant) has applied to the Department for a General Permit to (description of activity) at (address or legal description of property) in (city and county). Comments on this application should be mailed to the Department at the following address: (insert local OCRM office address), by (insert date, fifteen days after date of certified mailing).

(3) The applicant must furnish the certified mail stubs to the Department at the time of mailing. The General Permit cannot be issued until the fifteen day comment period has expired.

(4) Proof of publication that the above public notice was placed in a newspaper published in the county where the proposed activity is taking place must be forwarded to the Department office processing the application. General Permits cannot be issued until the fifteen day comment period as advertised in the newspaper has expired.

(5) A brief description of the proposed work, its purpose and intended use. A drawing or plat may be required as well as a description of the method of construction, and identification of materials and equipment to be used.

(6) Information on activities eligible for General Permits may be obtained from the Department.

30-18. Beach Restoration Fund.

A. Funding for Projects: Beach restoration projects will follow a cyclical pattern that is conditioned by the availability of funds. The Department will make an initial announcement when applications are to be submitted. The announcement will specify the time of submission and the format to be used. There will be at least a 90 day period for receiving applications. Projects that are not funded during the initial cycle will be eligible for consideration at the next cycle which will start when additional funds become available. Communities will be given the opportunity to update their applications for subsequent cycles to show any changed conditions.

B. Application Process: Applications for beach nourishment must be submitted to the Department. The applications will be reviewed by the staff for completeness and eligibility requirements. Input from the applicant and the public will be solicited and considered. In evaluating the project applications the Department will be guided by the legislated criteria and guidelines, and, the following consideration:

- (1) Environmental impact of the project.
- (2) Public recreational benefit.
- (3) Expected useful life of project.
- (4) Protection benefit of project.
- (5) Extent of support for project.

C. Necessary Permit Application Information: Any eligible local government desiring to submit an application for Beach Restoration Funds should submit a completed permit application to the Department. The following information should be submitted on or attached to the permit application form.

- (1) The name, address, and telephone number of the local government making the application and the name and telephone number of the designated liaison agent.
- (2) The name, address, and telephone number of the project consulting engineer or other agent.
- (3) A resolution adopted by the applicant's governing body approving the submittal of an application for beach restoration funds, and committing to the local funding requirements necessary to complete the project.
- (4) The Chief Executive Officer of the governing body should sign the application.
- (5) A narrative description of the project to include:
 - (a) Project limits.
 - (b) Quantity of fill.
 - (c) Borrow sites.
 - (d) Expected design life of project.
 - (e) Project construction duration and time of year.
 - (f) Estimated first cost and annual maintenance costs.
 - (g) A statement as to the source and availability of all local, state, and federal funds for the project.
 - (h) Benefits to be realized by the project.
 - (i) Environmental impacts.

(j) Public access to renourished area.

(6) Map or maps showing:

(a) Project site plan and borrow area locations.

(b) Upland ownership of property, indicating federal, state, local, or private ownership.

(c) Public access points.

(d) Public parking areas.

(e) Private parking areas.

(f) Baseline and setback line(s).

(7) Any engineering studies that have been completed concerning the project, and plans for post-project monitoring.

(8) Approved beach restoration plan for the community which includes an analysis of beach erosion control alternatives.

D. Minimum Regulatory Requirements: All applications will be evaluated to determine if the project meets the minimum regulatory requirements and then ranked on a relative basis according to the five considerations listed in R.30-18(E). The minimum regulatory requirements are:

(1) Prior to July 1, 1991:

(a) A state-approved shorefront management plan or a state-approved local nourishment plan, and

(b) A state and locally approved beach access plan with an implementation schedule. The plan must include an inventory of current access and parking, an analysis of current and future demand, and a strategy for enhancing public access and parking, and

(c) A complete application.

(2) After July 1, 1991:

(a) A state approved beach management plan developed in accordance with Section 48-39-350 of the South Carolina Coastal Zone Management Act, as amended, and

(b) A complete application.

E. Project Evaluation Considerations: If the project meets the minimum regulation requirements, the project is then evaluated and ranked using the following considerations:

(1) Environmental impact of project.

(2) Public recreational benefit.

(3) Expected useful life of project.

(4) Protection benefit of project.

(5) Extent of support for project.

F. Administration of the Project: The execution and administration of the project will be coordinated by the Department according to regulations of the State Budget and Control Board regarding procurement of architectural/engineering services and for construction of permanent improvements projects.

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